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Letter dated 13 May 2008 from the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities addressed to the President of the Security Council

I have the honour to transmit herewith the eighth report of the Analytical Support and Sanctions Monitoring Team established pursuant to resolution 1526 (2004) and extended by resolutions 1617 (2005) and 1735 (2006).

The report was submitted to the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities on 31 March 2008 in accordance with Security Council resolution 1735 (2006), and is currently being considered by the Committee.

I should be grateful if the attached report could be brought to the attention of the Council members and issued as a document of the Security Council.

(*Signed*) Johan **Verbeke**
Chairman
Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

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Letter dated 31 March 2008 from the Coordinator of the Analytical Support and Sanctions Monitoring Team addressed to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

The Analytical Support and Sanctions Monitoring Team established pursuant to Security Council resolution 1526 (2004) and extended by Security Council resolutions 1617 (2005) and 1735 (2006) concerning Al-Qaida and the Taliban and associated individuals and entities has the honour to transmit to you its eighth report, in accordance with resolution 1735 (2006).

The Monitoring Team notes that the document of reference is the English original.

(*Signed*) Richard **Barrett**
Coordinator

Report of the Analytical Support and Sanctions Monitoring Team pursuant to resolution 1735 (2006) concerning Al-Qaida and the Taliban and associated individuals and entities

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I. Summary

1. The present report, the last under the Monitoring Team's current mandate, attempts to take stock of the Al-Qaida/Taliban sanctions regime and make proposals for its further development. It notes that the Al-Qaida and Taliban leadership continues to try to exert control over a movement that it inspires but does not direct. It also notes the growing problem in Afghanistan and the Afghanistan/Pakistan border area, and a continuing threat in North Africa, with no reduction in activity elsewhere. It sees the failure of many plots and attacks as confirmation of the need to prevent Al-Qaida and the Taliban from passing their skills and experience to a new generation of supporters.

2. The report examines the continuing problems associated with the Consolidated List of individuals and entities subject to the sanctions measures and concludes that these seriously undermine implementation; but at the same time it notes the many improvements that have been made. The report also draws attention to the legal challenges to the implementation by Member States of the measures, and the likely consequences should they be successful. It examines the three sanctions measures and how they might become more effective.

3. The Team sees no reduction in the resolve of the international community to address the threat posed by Al-Qaida, the Taliban and their associates, or any doubt that the United Nations should play a leading role. The Security Council sanctions regime is at the forefront of the operational effort at the international level but it is Member States that are responsible for the security of their citizens. The sanctions regime must retain their confidence and support, both at a governmental and a public level. The Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban (hereinafter referred to as "the Committee") has done much to provide Member States with opportunities to express their views, whether directly or through the Team. And the Team considers that it is only through such dialogue that the Committee can develop the regime to respond to the changing threat, improve implementation of the measures, and reassure international opinion that the sanctions are appropriate to the challenges posed by Al-Qaida, the Taliban and their associates.

II. Overview

4. International opinion continues to regard the threat from Al-Qaida-related[1] terrorism and the Taliban as significant. At its meeting in Tunis in January 2008, the Council of Arab Interior Ministers identified terrorism as a critical threat to Arab States. A United Nations report issued in March 2008 recorded a rise of 30 per cent in incidents of insurgent and terrorist activity in Afghanistan in 2007 over 2006.[2]

[1] The permanent reference number is indicated for listed or previously listed individuals and entities at first mention; thereafter, they are indicated by *. All other names may be assumed to be unlisted. As Al-Qaida, Usama bin Laden and the Taliban are named in the Security Council resolutions, they are simply mentioned by name.

[2] Figures given were 566 per month on average in 2007, compared to 425 in 2006 (A/62/722-S/2008/159, para. 17). There were 381 recorded incidents in January 2008, and 452 in February. These months normally see fewer than average incidents because of the cold weather. Source: United Nations Assistance Mission in Afghanistan (UNAMA).

However, although the situation in Afghanistan, as in other conflict areas, shows little sign of early resolution and although many thousands of people around the world are still being influenced by Al-Qaida's message, the popular appeal of the Al-Qaida leadership and support for its tactics appear to be on the wane.[3]

A. Al-Qaida

5. Other violent radicals increasingly see Al-Qaida as a marginal force in real political terms. Many now understand that what Al-Qaida claims to be religious duty, or "jihad", is nothing more than criminal violence, often directed against fellow Muslims. They have come to regard the assumption by Al-Qaida fighters of the right to declare other Muslims apostate (takfirism) not only as arrogant but also as deeply offensive.

6. There have been several significant statements condemning Al-Qaida, notably in October 2007 by the highest religious authority in Saudi Arabia, Sheikh Abd al-'Aziz bin Abdallah Aal al-Sheikh, and the month before by Sheikh Salman al-Awdah, a prominent independent cleric known for his defiant and radical criticism of the established regime. Other former allies have also turned against Al-Qaida, most importantly the highly influential Islamic Jihad ideologue and one of Aiman al-Zawahiri's (QI.A.6.01) oldest and closest associates, Sayyid Imam al-Sharif, also known as Doctor Fadl, who is in prison in Egypt. In his "Document of right guidance for jihad activity in Egypt and the world", which appeared in November 2007, he argued that Al-Qaida had overreached itself and that its acts violated Islamic law. The inference that Usama bin Laden and Al-Zawahiri* could therefore be tried in absentia by an Islamic court is an idea which deserves support. Replies by Al-Zawahiri*[4] and other prominent Al-Qaida leaders, such as Muhammad al-Hakaymah[5] and Abu Yahya al-Libi,[6] show the extent of Al-Qaida's concern at this ideological challenge.

7. The increasingly public rejection of Al-Qaida's credentials by such figures, and the work of several States to ensure that the Al-Qaida message is exposed as falsely based, should be reinforced by action elsewhere. This includes avoiding the use of terms that appear to accept Al-Qaida's claims of religious justification; the Team continues to argue that the use by non-Muslim commentators and politicians of religious terms when describing Al-Qaida, however convenient, commonplace or well-intentioned, makes it harder to undermine its message and to isolate it from its target community.

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[3] For example, a survey conducted in Pakistan for Terror Free Tomorrow: The Center for Public Opinion in January 2008 showed approval for Usama bin Laden at 24 per cent, compared with 46 per cent in August 2007, while backing for Al-Qaida fell to 18 per cent from 33 per cent, and for the Taliban to 19 per cent from 38 per cent (see www.terrorfreetomorrow.org, "Pakistan: new poll before 2008 elections"). According to a July 2007 report by the Pew Global Attitudes Project, large and growing numbers of Muslims in the Middle East and elsewhere are rejecting Islamic extremism (*A Rising Tide Lifts Mood in the Developing World*, available at http://pewglobal.org/reports/display.php?ReportID=257).

[4] *"A Treatise Exonerating the Nation of the Pen and the Sword from the Blemish of the Accusation of Weakness and Fatigue"* (released 2 March 2008).

[5] "History of intellectual retreats in Egyptian prisons" (released 10 December 2007).

[6] Video released on 9 March 2008.

8. While Al-Qaida as an organization has not developed and its core leaders have been unable to focus their supporters on key operational issues or guide them towards specific action, Al-Qaida as a movement has continued to flourish, inspired by a general message of resistance to actual or perceived injustice. Supporters are often recruited face-to-face by existing radicals in areas where Internet penetration is low, but elsewhere the Internet plays an important role in introducing people to violent radicalism and leading them to join like-minded peers in existing or new cells. The demographics of Al-Qaida supporters have changed, with new followers being younger, sometimes no older than 15 years of age, and therefore less educated than their predecessors. They are also more ignorant of and appear less interested in religious teachings.[7] The inclusiveness of the Al-Qaida message, as disseminated through the Internet, allows a wide range of potential supporters to see in it a reflection of their own personal grievances.

9. Furthermore, the lack of an organizational structure makes the detection of new cells particularly difficult for the counter-terrorist community, which is generally not so much concerned by the strategic objectives of the leadership as by the less coherent aspirations and actions of its followers. While Al-Qaida leaders, constrained by international action, may be unable to translate their support into coordinated violence under their control, they continue to attract followers, some of whom are determined to commit terrorist acts in their name, with no need to see their actions as part of a wider political programme. It does not require more than the occasional bombing of a random target to top up levels of public fear and anxiety.[8]

B. Al-Qaida affiliates

10. Al-Qaida in Iraq, also known as Jama'at al-Tawhid wa'al-Jihad (QE.J.115.04), remains the most active group affiliated with Al-Qaida, though it has been hard hit by the Awakening Councils and has lost further support through its increasing criminality. Although it is closely identified with the wider insurgent movement known as the "Islamic State of Iraq",[9] which continues to claim interest in a broader, international movement,[10] Al-Qaida in Iraq appears to be breaking down into disconnected groups and the Team has seen no evidence of consistent contact with the Al-Qaida leadership. It attracts fewer fighters from outside the country, and the journey in any case has become more difficult as security forces both inside and outside Iraq have closed down facilitators and disrupted routes.[11] The United States Army reported in early March 2008 that the flow of foreign fighters into Iraq had

[7] These are the general conclusions of security officials from many areas who are in contact with the Team.

[8] Opportunistic acts by unconnected cells accord with a strategy advocated by one of the major Al-Qaida ideologues, Abu Musab al-Suri, also known as Mustafa Setmariam Nasr, as set out in "The call to global Islamic resistance" (published in 2004).

[9] In an audio statement in December 2007, Abu Omar al-Baghdadi, the purported leader of the Islamic State of Iraq, claimed that the two groups had joined (English transcript available at the NEFA Foundation website, www.nefafoundation.org). In an address released on 16 December 2007, Zawahiri said that there was no such thing as Al-Qaida in Iraq and that the Islamic State of Iraq was the sole affiliate there.

[10] In an audio statement in July 2007, Al-Baghdadi attacked the Islamic Republic of Iran and expressed support for associates in Lebanon, and in another statement in February 2008, he offered support for fighters in the Palestinian territories.

[11] In his audio statement of 4 December 2007, Al-Baghdadi said "only 200 ... are left in our beloved Iraq".

been reduced by about 50 per cent over the course of the previous four to six months, and stood at 40 or 50 a month.[12] Some reports to the Team suggest that a number of foreign fighters have left Iraq for Afghanistan or have returned to their home countries.[13]

11. The affiliation with Al-Qaida of the Organization of Al-Qaida in the Islamic Maghreb (AQIM) (QE.T.14.01) and the Libyan Islamic Fighting Group (LIFG) (QE.L.11.01), which the Al-Qaida leadership acknowledged in September 2006 and November 2007, respectively, does not appear to have led so far to a major inflow of foreign fighters to support their operations, though they have benefited from offering to help fighters from the region to travel to Iraq and then deploying them locally. Fighters who have left Iraq for North Africa appear in the main to be nationals returning home, but are nonetheless dangerous for that. Although the Al-Qaida leadership may have seen the link-up with AQIM* and LIFG* as a way to broaden its reach, the public affiliation with Al-Qaida has caused divisions within the groups themselves, with some arguing for a purely regional focus and others for a global campaign. The authorities in both Algeria and the Libyan Arab Jamahiriya have been quick to exploit the divisions,[14] while continuing to bear down heavily on committed fighters.[15] The arguments have not stopped the attacks, with the most serious occurring in Algiers on 11 December 2007, when United Nations offices and the Constitutional Court were targeted by suicide bombers.

12. Attacks and arrests associated with Al-Qaida have also occurred elsewhere since the Team last reported in September 2007, including in Belgium, France, Germany, India, Indonesia, Lebanon, Mali, Mauritania, the Philippines, Saudi Arabia, Somalia, Tunisia, Turkey and Yemen. This confirms that there is no shortage of Al-Qaida supporters who aspire to be terrorists, and who are ready to die in the act, but without the direction of the leadership and the opportunity to train in bomb-making and security awareness, they have, so far, been less effective than they might have been. This may change if local groups manage to link up with veterans from Afghanistan, Iraq or Somalia, or to find ways to send their members abroad for training. The challenge for the international community will be to prevent this.

C. Al-Qaida use of the Internet

13. Al-Qaida leaders continue to rely heavily on the Internet, in particular to pursue the intensive propaganda campaign that constitutes a major part of their strategy. Bin Laden has issued five messages,[16] Aiman al-Zawahiri* five statements

[12] Interview of General Petraeus, 5 March 2008, available at www.mnf-iraq.com/index.php?option=com_content&task=view&id=17471&Itemid=1.

[13] Intelligence briefings by Member States.

[14] In February 2008, the Libyan authorities were reported to have reached an agreement with imprisoned LIFG* leaders; European supporters of LIFG* are reported not to have approved of the affiliation with Al-Qaida; Algerian media reports suggest that Mokhtar Belmokhtar (QI.B.136.03) and others may have split from AQIM* and that Abdelmalek Droukdel (QI.D.232.07) faced challenges as leader of AQIM* in September 2007.

[15] For example, Abderahmane Bouzegza, believed responsible for the attacks of 11 December in Algiers, was killed in late January 2008.

[16] "A message to our people in Iraq" (released 22 October 2007); "Message to the peoples of Europe" (released 30 November 2007); "The way to contain the conspiracies" (released 29 December 2007); "May our mothers be bereaved ... if we fail to help our Prophet" (released 19 March 2008); and "The way for the salvation of Palestine" (released 21 March 2008).

and one book,[17] and Abu Yahya al-Libi five messages since 1 October 2007.[18] Other members of the Al-Qaida leadership, such as Mustapha Abu el-Yazeed (QI.O.11.01),[19] Muhammad al-Hakaymah[20] and Sheikh Muhammad Yasser,[21] have also published statements, and Abu Omar al-Baghdadi, the name used by the purported leader of the Islamic State of Iraq, issued two major audio speeches.[22] Al-Qaida in the Islamic Maghreb,* the Al-Qaida-affiliated Islamic State of Iraq and Ansar al-Sunna (also known as Ansar al-Islam) (QE.A.98.03) have been releasing a steady flow of communiqués, statements and videos to claim responsibility for and keep a record of their operations. Al-Qaida has continued to publish its magazines, "Echo of the Jihad" and "Vanguards of Khorasan". Al-Qaida in Yemen, under the leadership of Nasser al-Wahayshi, has begun to take on a higher public profile and has published the first two issues of a new online magazine, "Sada al-Malahem". Zawahiri* dedicated a long section of his message of 16 December 2007 to those engaged in propaganda work and emphasized the vital role played by what he calls the "jihadi media".[23]

14. As pointed out by Zawahiri,* the Al-Qaida leadership manages to maintain its high public profile thanks to an intricate network of people involved in the production, translation and distribution of its propaganda over the Internet. This network continues to use media outlets such as the Al-Sahab media foundation, Global Islamic Media Front (GIMF), Al-Fajr information centre or internal media committees — in the case of the Organization of Al-Qaida in the Islamic Maghreb,* Islamic State of Iraq and Ansar al-Sunna* — to distribute material via open or password-protected forums such as Al-Ekhlaas, Al-Hesba or Al-Boraq.

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[17] "Unity of the ranks" (featuring also Abu Laith al-Libi; released 3 November 2007); "Annapolis, the betrayal" (released 14 December 2007); "A review of events, fourth interview with Al-Sahab" (released 16 December 2007); "An elegy to the martyred commander Abu Laith al-Libi" (released 27 February 2008); *A Treatise Exonerating the Nation of the Pen and the Sword from the Blemish of the Accusation of Weakness and Fatigue* (book rebutting Sayyid Imam's rejection of the legitimacy of violent jihad, released 2 March 2008); and "Rush to help our people in Gaza" (released 23 March 2008).

[18] "The closing statement for the religious training that was held at one of the Mujahideen centres" (released 7 November 2007); "Going forth" (released 18 December 2007); "Sermon Eid al-Adha 1428" (released 23 January 2008); "Eulogy of Abu Laith al-Libi" (released 3 March 2008); "I am not in the [business of] deception and no imposter will deceive me: a response to the guidance document [of Sayyid Imam]" (released 9 March 2008).

[19] "Light and fire: an announcement to the Ummah", eulogy of Abu Laith al-Libi (released 6 February 2008); "They lied ... now the fight has come" (released 6 March 2008).

[20] Statement regarding Sayyid Imam's criticism (released 26 November 2007); "History of intellectual retreats in Egyptian prisons" (released 10 December 2007).

[21] "The American is an infidel fighting the Muslims. Hence, the Muslims must fight him everywhere" (released 21 October 2007).

[22] "As for the foam, it passes away as scum" (released 3 December 2007); and "The religion is sincere advice" (released 13 February 2008).

[23] "I caution everyone who is interested in acquainting himself with the truth about what the mujahideen publish and say ... to depend solely on the full transcripts of the mujahideen's releases which they publish on the Internet" ... "Jihadi information media are today undergoing an extremely critical battle against the Crusader-Zionist enemy ... [and] Allah has favoured the mujahideen with victory in this ideological-propaganda battle". Commending those working in the "jihadi media", he declares: "I remind those unknown soldiers that they are on a great frontier of Islam and that they are demolishing the myths and fantasies which Western and Eastern propaganda kept transmitting to the ears of our listeners, the minds of our thinkers and the curricula of our students".

15. The Team suggests that the Committee could consider listing such media outlets and the main individuals and propagandists behind them, on the basis that their Internet activities demonstrate an association with Al-Qaida, as defined by the Security Council in resolution 1617 (2005). This seems particularly relevant in instances in which they distribute material that might be considered an incitement to violence or that aims to recruit and train others to manufacture explosives or conduct bombings and suicide attacks, or where they aim to raise funds for listed entities. The Team also considers that the Council could call on Member States to take appropriate legal and practical measures to prevent the use of the Internet in ways which violate the sanctions measures imposed against Al-Qaida, the Taliban and their associates, and ensure that the assets freeze and the arms embargo are enforced in the virtual space. To be effective in the long term, and to be legitimate, such measures would, of course, need to accord with other obligations under international law, including human rights law.

D. The Taliban

16. The will of the Taliban to continue the insurgency is unbroken,[24] and the sanctions appear so far to have had limited impact. None of the several Taliban commanders captured or killed since October 2007 was listed,[25] highlighting the growing gap between the actual leadership of the insurgency and the names that currently appear in the Taliban section of the Consolidated List.[26] In addition, the absence of any formal financial system in Afghanistan,[27] its porous borders and the limits to governmental authority make effective implementation of the sanctions measures particularly difficult. According to the United Nations Assistance Mission in Afghanistan (UNAMA), 36 of the 376 districts of Afghanistan remain largely inaccessible to Afghan officials (A/62/722-S/2008/159, para. 2).

17. Over 8,000 fatalities were recorded in Afghanistan in incidents involving insurgents throughout 2007 (A/62/722-S/2008/159, para. 17), compared to 6,000 killed in all kinds of violence in 2006. This increase in violence has continued into 2008, especially in the southern provinces. On 17 February 2008, at least 80 people were killed by a suicide attack in Kandahar province, making it the deadliest suicide attack by the insurgency to date. On the following day, another suicide attack killed

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[24] For example, announcement by Mullah Baradar (TI.B.24.01) on the Taliban website in late February (source: www.alemara.org/markli-3-22-2-2008, retrieved by the Team on 12 March 2008).

[25] Mawlawi Islam Muhammadi (TI.M.90.01), a member of the Lower House of the Parliament since 2005, was assassinated in Kabul in January 2007. Press reports that Jalaluddin Haqqani (TI.H.40.01) died in the United Arab Emirates in June 2007 remain unconfirmed.

[26] Only 2 listed individuals were among the top 12 wanted by the Afghan National Army and the International Security Assistance Force (ISAF) in October 2007: Tohir Yuldashev (QI.T.36.01) and Sirajuddin Haqqani (TI.H.144.07). Only 19 listed individuals feature among the 58 key leaders identified by the Afghan Government. Only 2 of the 34 operational provincial commanders are listed: Sirajuddin Haqqani* and Manan Niyazi (TI.N.97.01). Information provided by the Government of Afghanistan via the United Nations Assistance Mission in Afghanistan.

[27] In late 2003, the Afghan Central Bank resumed licensing local and foreign commercial bank branches in Afghanistan, and the Afghanistan Banks Association (ABA) was established in September 2004. At present there are 14 licensed banks operating as members of the ABA (source: www.aba.org.af/about.asp).

at least 30. Suicide attacks and improvised explosive devices, rare in Afghanistan before mid-2005, are now commonplace, with an average of three suicide attacks occurring each week.[28]

18. Another rising trend has been the involvement of the Taliban in the drug trade. Despite the counter-narcotics activity of Afghan and international bodies, opium poppy cultivation continues on a massive scale. A survey conducted in February 2008 by the United Nations Office on Drugs and Crime suggested that the poppy crop in 2008 would approach the record levels set in 2007[29] when the total income from opium was estimated at $4 billion, of which 90 per cent was believed to go to traffickers and their facilitators.[30] Cannabis cultivation is expected to increase as well. There is an alliance of convenience between the Taliban and drug lords, with both having an interest in seeing a weak government and in corrupting central and provincial officials.

19. All poppy farmers who responded to the United Nations Office on Drugs and Crime survey in the south of the country said that they paid a tax of approximately 10 per cent of their income from poppy cultivation to groups which included the Taliban; this was not true for farmers in the central, north and north-eastern regions, where security conditions were better and the Taliban had less influence. The survey also noted a reduction in poppy cultivation in those areas.

20. Since the Team last reported in September 2007, there have been several narcotics-related incidents in areas in which the Taliban are strong. For example, in December 2007 large quantities of narcotics, heroin-producing equipment and precursor chemicals were discovered when Afghan forces and the International Security Assistance Force (ISAF) retook the town of Musa Qala. Local inhabitants reported that the Taliban had encouraged the construction of heroin laboratories under their protection and had levied a 10 per cent tax on the product. In February 2008, a ton of raw opium, about 20 kilograms of pure heroin and over 1,000 kilograms of chemicals were seized by Afghan forces and ISAF in a drug-processing plant controlled by insurgents in Helmand.[31] Later that month, Afghan forces and ISAF discovered and destroyed 1.5 tons of opium (worth $400 million) along with two large drug presses and other drug-related equipment in a compound in the upper Sangin Valley, in Helmand.[32]

21. By paragraph 12 of its resolution 1735 (2006), the Security Council encouraged States to identify drug traffickers who supported the Taliban and to submit their names for listing. While some States have looked further into doing so, and four names on the List do reflect an involvement in the drug trade,[33] no new name has yet appeared purely on the basis of such involvement. This suggests

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[28] UNAMA, *Suicide attacks in Afghanistan* (2001-2007). There were 160 suicide attacks in 2007.

[29] *Afghanistan Opium Winter Rapid Assessment Survey 2008*, available at www.unodc.org/documents/crop-monitoring/Afghan-winter-survey-Feb08-short.pdf.

[30] In 2007, for the first time, the drug economy grew faster than the legal economy. United Nations Office on Drugs and Crime, *Afghanistan Opium Survey 2007 (October 2007)*, available at www.unodc.org/documents/crop-monitoring/Afghanistan-Opium-Survey-2007.pdf.

[31] Source: www.mod.uk/DefenceInternet/DefenceNews/MilitaryOperations/UkAndAfghanForcesSeizeTonneOfOpium.htm.

[32] Source: www.nato.int/isaf/docu/pressreleases/2008/02-february/pr080226-080.html.

[33] Sayyed Ghiassouddine Agha (TI.A.72.01); Zia-ur-Rahman Madani (TI.M.102.01); Abdul Salam Hanafi Ali Mardan Qul (TI.H.27.01); and Akhtar Mohammad Mansour Shah Mohammed (TI.M.11.01).

reluctance, for whatever reason, to submit such names, and the Team intends to examine this issue further and to report to the Committee as new information on the Taliban's contact with the drug trade becomes available.

22. While the Taliban remains an overwhelmingly Afghan movement, two groups of foreigners contribute to its success:[34] the Tehrik-e-Taliban and associated groups in Pakistan under the overall leadership of Baitullah Mehsud,[35] and other foreign fighters, mainly Uzbeks and Arabs, some of whom may have arrived recently from Iraq and who appear to be playing an increasingly important role as advisers.[36] Pakistani authorities have told the Team that in 2007 their security forces were the target of 40 suicide bombings, 50 improvised explosive devices, 129 rocket attacks and 8 ambushes. As a result, 1,045 soldiers were killed, 1,452 wounded and 692 civilians injured along with them. The Pakistani army launched 106 major operations against terrorists and insurgents during the year.

III. Consolidated List

23. As at 31 March 2008, the Consolidated List[37] had 482 entries: 142 individuals associated with the Taliban, and 228 individuals and 112 entities associated with Al-Qaida. The Consolidated List remains the cornerstone of the sanctions regime. However, as the Team has noted in all its previous reports, the List has serious defects. It requires all Member States, under the active leadership of the Committee and with the help of the Team, to put this right; until that happens, the impact of the sanctions regime will continue to fade.

A. Lack of identifiers

24. The most immediate task is to ensure that each entry on the List contains as much current detail as possible about the listed party, and certainly enough to allow a confident identification. Both government officials and representatives of the private sector, such as those of banks, who use the List on a regular basis, continue to complain that some entries lack the basic identifiers necessary to make any check against them worthwhile. At present, 57 entries for individuals do not contain a full name and date of birth; another 5 have a full name and date of birth, but nothing else; and 26 have a name, date and place of birth but no other identifiers, such as nationality, address or country of residence.

25. The Team's contacts have pointed out two consequences of these deficiencies. First, effective implementation of the sanctions regime is directly related to the quality of the information available on its targets. Second, limited information creates frustration and disaffection among the people responsible for checking the

[34] UNAMA statistics record the arrests of over 100 foreign insurgents by Afghan and international security forces in 2007. In March 2008, during a debate in the Security Council, an Afghan official referred to the apprehension of 1,000 terrorists, including foreigners (S/PV.5851).

[35] Officials briefing the Team.

[36] Officials briefing the Team and statements by two senior Al-Qaida commanders in the area: Mustapha Abu el-Yazeed,* on 6 March 2008, and Abu Yahya al-Libi, on 9 March 2008.

[37] The Consolidated List maintained by the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities (available at www.un.org/Docs/sc/committees/1267/consolist.shtml).

List, on whom effective implementation most depends, increasing the risk that listed names will not be spotted and that the measures may be applied to unintended targets. Most of the Team's contacts agree that the minimum information required for a basic check of the List is a full name, date (or at least year) of birth and, if possible, citizenship; for a check of money transfers, a name and an address are essential.

26. While it is understandable that no list of semi-clandestine Taliban and Al-Qaida associates is likely to be rich in detail, the Team questions the purpose of keeping entries on the List that have limited or no operational value. The Committee has always urged States to provide as much detail as possible when submitting a name for listing, and has called on them to use the cover sheet, which provides both a template for and guidance on what is required.[38] Although the Committee has set no minimum criteria for listing, it is unlikely that it would accept a new submission for the listing of an individual which lacked basic identifiers. However, the problem of existing listings remains, and while the Committee may not wish to remove from the List even the most incomplete entries on individuals while waiting for additional identifiers, the Team considers that such entries detract from the impact and credibility of the sanctions regime. Accordingly, it recommends that the Committee keep them under constant review and even consider placing them in a separate category within the List, until they contain identifiers sufficient to allow the sanctions to be applied effectively.

27. There has been much progress made in improving the information on the List in recent months, with contributions from 19 Member States leading to 44 proposed amendments in the six months since the Team last reported at the end of September 2007. During 2007, 324 changes were made to existing entries on the List, and 15 have been made so far in 2008. However, further effort is required. Until now, the Team has always proposed amendments to the List based on information that it has received from States. It now proposes that it also submit to the Committee, at set periods, information that it has obtained from its own research of publicly available official sources,[39] or with the help and agreement of United Nations agencies, such as UNAMA. In such cases, the Team would identify the source of each piece of new information when presenting it to the Committee for consideration.

28. The second most immediate objective concerning the List is to ensure that it is an accurate reflection of the threat and, as such, incorporates the names of recently identified Taliban and Al-Qaida associates worthy of listing. States remain reluctant to submit names (S/2007/677, para. 26) and, when they do so, it often takes some months for the Committee to decide whether or not to include them. To promote the List as a dynamic and responsive tool, the Team has suggested providing the Committee at regular intervals with a report on individuals and entities associated with the Taliban and Al-Qaida that have been especially active in the period concerned (S/2007/677, para. 27). The Committee is considering this proposal.

[38] The cover sheet appears as annex I to Security Council resolution 1735 (2006) and is available from the Committee's website (www.un.org/sc/committees/1267/pdf/coversheet.pdf).

[39] See, for example, www.ustreas.gov/offices/enforcement/ofac/programs/terror/terror.pdf and http://ec.europa.eu/external_relations/cfsp/sanctions/list/consol-list.htm.

B. Photographs

29. One suggestion that the Team has heard often is to add photographs to the entries for individuals on the List. Besides security bodies, this request has come in particular from officials, such as those working at border posts, and from private sector representatives, such as those working at banks, who have to decide quickly whether the person in front of them is indeed the person on the List when some, but not all, identifiers coincide. The value of a photograph depends on many factors, including the date that it was taken and the quality of its reproduction; it can also mislead as well as help, especially considering that many listed individuals may take measures to alter or conceal their identity.[40] Nonetheless, the Team agrees that, where a useful photograph does exist, it should be available to those checking the List.

30. The Committee may find it hard to authenticate and include photographs on the List itself and, since the List is often distributed by Member States in hard copy, the quality of the photographs could quickly deteriorate when printed or photocopied. However, 76 of the publicly available INTERPOL-United Nations Security Council special notices[41] for listed individuals contain photographs[42] and the Committee could invite States to submit them for those that do not. This could be done directly to the International Criminal Police Organization (INTERPOL) through the relevant national central bureau, or through the Team. The Team recommends that the Committee also establish a hyperlink between each entry on the List and the corresponding special notice (regardless of whether or not the notice contains a photograph), or at least mention on the List that a special notice exists for that entry. States which distribute the List in printed form to border points could then attach copies of the relevant special notices, including high-quality photographs when available.

C. Dead people on the List and the annual review of listings

31. The continued listing of individuals reported to be dead has led to questions about the relevance and purpose of the List. As at the end of March 2008, 12 individuals were identified on the List as dead or reportedly dead, and although the Committee has looked into this matter at length and in April 2006 issued a note verbale to Member States explaining how such names could be removed from the List, the Team believes that more could be done. In particular, it recommends that the Committee amend paragraph 6 (i) of its guidelines[43] so that the names of individuals identified as dead are automatically reviewed each year, along with any listings selected by the Committee from the pool of entries that have not been updated in four years or more, unless a Committee member specifically requests that the name of a reportedly dead person be removed from consideration. As with any other name under review, these listings would be examined without any presumption

[40] For example, Fazul Abdullah Mohammed (QI.M.33.01) is reported to have undergone plastic surgery.

[41] See www.interpol.int/Public/NoticesUN/Default.asp.

[42] The photographs of another five listed individuals are available only on the restricted versions of the special notices.

[43] www.un.org/Docs/sc/committees/1267/1267_guidelines.pdf.

as to the result, and the listings would be renewed automatically unless the Committee decided to remove them.

32. A review of these names under paragraph 6 (i) of its guidelines would provide the Committee with an opportunity to contact the designating State(s) and, as appropriate, the State(s) of residence or nationality, to obtain information that could help resolve these cases. In addition to the 12 individuals on the List recorded as dead, the Team is aware of 7 others who have been reported as dead by their State of residence or citizenship either to the Committee, the Team or INTERPOL, and a further 13 whose deaths have been reported in open sources but not yet notified officially to the Committee or to the Team. The Committee may wish to consider these cases as well.

33. To increase the likelihood that more information will emerge, the Team recommends that the Committee invite all States to provide information on names selected for review under paragraph 6 (i), not just the designating State(s) and the State(s) of residence or citizenship, as at present. The Committee could notify States of its review through a press release or on its website.[44] It also recommends that the Committee amend paragraph 6 (i) so that relevant States are provided access to all material designated by the submitting State(s) as publicly releasable or releasable to other States upon request, whether as part of the statement of case or of the cover sheet.

D. Distribution of the List

34. Another vital determinant of the effective and timely application of the sanctions is the way in which States distribute updates to the List. If distribution lags behind the public announcement on the Committee's website, there is a real risk that targeted individuals or entities will have a chance to move their assets or themselves to safety. At present, the United Nations Secretariat circulates updates to the List by e-mail to over 480 addresses. These include the permanent missions of Member States in New York, officials in capital cities, international bodies, and regional organizations which deal with terrorism issues. While some Member States allow officials and private sector bodies to act on these e-mails or to incorporate changes directly from the Committee's website into their watch lists, others wait to receive in the capital a hard-copy notification from the mission in New York before distributing it, often also in hard copy.

35. Clearly, all States will distribute the List and implement the sanctions measures in whichever way they see fit, but the Team recommends that the Committee do what it can to encourage States to allow the implementation of updates based on an e-mail, a soft-copy notice or postings on its website. As some States do not have the infrastructure or the legal basis to be able to accept electronic notifications of listings, the Team recommends that, where this is the case, the Committee investigate the possibility of circulating the List through the local United Nations office to ensure that notifications of listings are not unduly delayed. The Team also recommends that the Committee invite States which do accept electronic updates, or otherwise find them useful, to provide all relevant e-mail addresses to the Secretariat, directly or through the Team, and to keep them up to date.

[44] See also the Team's recommendations in this regard contained in its seventh report (S/2007/677, para. 45).

E. Other suggested improvements

36. A frequent suggestion has been to improve the presentation of the List, and it is easy to understand why. The List would be easier to use if each category under an entry (name, date of birth, nationality and so forth) occupied its own line. The poor appearance of the List contrasts with the considerable improvement that the Committee has made to its website, and the Team suggests that the Committee commission it to offer a new format for its approval.

37. The different ways in which names are read in different cultures can cause confusion with the List. The Committee has agreed that the Team should examine this issue with the aim of developing a standard naming formula that will ensure that the names of listed individuals are read correctly.

38. Recent improvements to the List include a new introductory page and guidance on searches,[45] and the removal of de-listed names to elsewhere on the Committee website. The Team recommends that the Committee encourage Member States to advise their officials and relevant private sector entities of the assistance offered by its website across a range of issues related to implementation.

IV. Implementation of the sanctions

A. The sanctions regime under challenge

39. The sanctions are at a legal crossroads, with much attention focused on two challenges now on appeal before the Court of Justice of the European Communities.[46] A lower court denied claims raised against the sanctions.[47] However, in a January 2008 advisory opinion, an Advocate General for the higher court, Miguel Poiares Maduro, rejected the lower court's conclusion that it lacked competence to review actions that implemented Security Council resolutions issued under Chapter VII of the Charter of the United Nations against the European Union's due process and human rights standards. He went on to find that the European regulation implementing the sanctions, EC 881/2002, infringed those standards, in particular the right to be heard, the right to effective judicial review by an independent tribunal and the right to property.[48]

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[45] Available at www.un.org/sc/committees/1267/consolist.shtml and www.un.org/sc/committees/1267/pdf/sguidance.pdf, respectively.

[46] Case C-415/05 (appeal from judgement of 21 September 2005 in Case T-306/01) brought by Ali Ahmed Yusaf (previously listed as QI.Y.47.01) and Barakaat International Foundation (QE.B.39.01); Case C-402/05 (appeal from judgement of 21 September 2005 in Case T-315/01) brought by Yasin Abdullah Ezzedine Qadi (QI.Q.22.01).

[47] Case T-306/01 Yusuf and Al Barakaat International Foundation v. Council and Commission, judgement of 21 September 2005; Case T-315/01, Kadi v. Council and Commission, judgement of 21 September 2005. Judgements available at curia.europa.eu/en/content/juris/index.htm. For more detail on these rulings, see the Team's fourth report (S/2006/154, annex, paras. 4-7) and fifth report (S/2006/750, annex III, para. 4).

[48] Opinion of Advocate General Poiares Maduro of 16 January 2008, Kadi v. Council and Commission, Case C-402/05, paras. 40, 47-55. On 23 January 2008, he issued a nearly identical advisory opinion in the companion appeal of Al Barakaat International Foundation v. Council and Commission, Case C-415/05.

40. If this position is adopted by the European Court of Justice, there is a real possibility that the regulation used by the 27 member States of the European Union to implement the sanctions will be held invalid. Although the immediate impact of such a judgement would affect only the implementation of sanctions against the applicants, it seems likely that it would trigger similar challenges that could quickly erode enforcement.[49] Moreover, it is unclear what options would exist for a long-term fix. Advocate General Maduro suggested that it would be difficult for individual European Union member States to replace the Community's regulation with domestic legislation, since any such measures likewise would be subject to the same European due process standards.[50] Furthermore, it is easy to imagine that the precedent of a decision that invalidated the sanctions, especially one affecting so many States, might lead to similar problems in other States outside the European Union.

41. The Committee has made a series of incremental improvements to its procedures which have addressed many of the concerns expressed about the fairness of the sanctions but one major issue remains: the suggestion that listing decisions by the Committee be subject to review by an independent panel. It is difficult to imagine that the Security Council could accept any review panel that appeared to erode its absolute authority to take action on matters affecting international peace and security, as enshrined in the Charter. This argues against any panel having more than an advisory role, and against publication of its opinions, to avoid undercutting Council decisions. It would argue too for the Council retaining authority to select or approve the membership of a review body. Finally, solutions also would have to be found to the many evidentiary problems associated with a review panel. Although the panel might be allowed access to the confidential statements of case presented to justify listings, Committee members also draw on intelligence and law-enforcement information available to them nationally or through other sources, including information obtained through bilateral exchanges, which could not easily be made available to reviewers.

B. Public statements of the case

42. A related criticism of the sanctions regime has been that listed parties do not know why they have been placed under sanctions and have no opportunity to challenge the evidence against them. The Committee does not act as a court of law; its measures are intended to prevent action rather than to punish it. The Security Council and the Committee have, however, made many changes to their procedures over the years which improve transparency and recognize basic standards of fairness that might apply were their decisions judicial. These include allowing individuals and entities under sanction to know the reasons for their listing.

43. The Security Council has called upon States to provide a statement of case when submitting the name of an individual or entity for inclusion on the List, with

[49] Indeed, as discussed in annex I to the present report, two other appeals raising similar claims are currently on hold in the European Court of Justice pending the resolution of the appeals by Qadi and Barakaat International Foundation (Cases C-402/05 and C-415/05). A number of other cases raising such claims are already before the European Court of First Instance.

[50] Opinion of 16 January 2008, Case C-402/05, at para. 30.

increasingly detailed requirements for what this should contain.[51] The Council has also called upon States to notify listed persons of their listing and its consequences and has requested submitting States to identify which parts of the statement of case, if any, might be publicly released to such persons as part of this notice.[52]

44. However, listed persons will see this statement of case only if the notifying State delivers it to them and, in any case, there is no provision for distribution of these statements to the broader public. To improve understanding of the sanctions, both for listed persons and for the public at large, the Team recommends that publicly releasable statements of case, where they exist, be made available on the Committee's website, whether through a hyperlink from the relevant List entry or otherwise. The Committee could include with this public statement any other information about the basis for listing provided by the submitting State(s) and identified as publicly releasable on the cover sheet, as well as any releasable supporting documentation provided. The Team further recommends that the Security Council explicitly request that Member States submitting names for listing provide a statement of case that may be released to the public.

45. Finally, in cases where the submitting States have not provided a publicly releasable statement of case, the Team believes that the Committee, as the party ultimately responsible for the quality of listings, should compile one itself. Many listed persons are the subject of publicly available indictments or judgements detailing their association with Al-Qaida or the Taliban which could be used; some members of the Committee also create and publish their own statements of case when they implement the sanctions domestically.[53] The Team could help by seeking out further information from Member States and other official sources. The Committee could also urge Member States to contribute additional information to the public statements on the website, just as it encourages them to provide further information for entries on the List. These steps would accord with the practice of the five other Security Council sanctions committees, which already publish on their websites some statement of reasons for the inclusion of the individuals and entities on their lists.[54]

C. Handling requests for information from Member States

46. States seeking further information on listings have complained to the Team that they often receive no answer to their requests. The practice of the Committee has been to forward these to the designating State or States for a response, leaving

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[51] Resolution 1526 (2004), para. 17; resolution 1617 (2005), para. 4; and resolution 1735 (2006), para. 5.

[52] Resolution 1526 (2004), para. 18; resolution 1617 (2005), para. 5; and resolution 1735 (2006), para. 6.

[53] For example, press releases published by the United States Office for Foreign Assets Control explain the reasons for designations, such as in the case of Mukhlis Yunos (QI.Y.126.03). See www.treas.gov/press/releases/js700.htm.

[54] The committees established pursuant to resolution 1518 (2003) (see www.un.org/sc/committees/1518/index.shtml); resolution 1521 (2003) concerning Liberia (see www.un.org/sc/committees/1521/index.shtml); resolution 1533 (2004) concerning the Democratic Republic of the Congo (see www.un.org/sc/committees/1533/index.shtml); resolution 1572 (2004) concerning Côte d'Ivoire (see www.un.org/sc/committees/1572/index.shtml); and resolution 1591 (2005), concerning the Sudan (see www.un.org/sc/committees/1591/index.shtml).

the requesting State to wonder if and when one will come. The Team recommends that the Committee follow up these requests after a fixed interval, depending on the urgency of the matter, to learn whether a designating State has responded, or intends to do so. This would allow the Committee to keep the requesting State informed, to ensure that the request is dealt with and to learn the results of any exchange. To complement such bilateral exchanges, the Committee, as the body ultimately in charge of designations, could also draft a reply to the requesting State on the basis of the information available and invite comments from the designating and other relevant State or States within a defined period.

V. Assets freeze

A. Update on frozen assets

47. At the end of September 2007, the Team noted that, under the sanctions regime, approximately $85 million had been frozen by 36 Member States (S/2007/677, para. 57). No Member State has reported changes to the amounts frozen, either for names already on the Consolidated List or as regards the six names added to the List or other modifications made since that time. Since September, the Committee has removed from the List Ahmed Idris Nasreddin (QI.N.66.02), and the 12 entities associated with him,[55] but there is no precise information on the amount of assets unfrozen as a result, though the Team knows of two States which had frozen assets related to these listings.

B. Non-binding, non-exhaustive list of targeted assets

48. To be effective, it is essential that all targeted assets of a listed individual or entity be frozen as soon as a listing is made. In order for the private sector to act swiftly, the Committee and authorities in Member States may wish to identify the range of assets that are subject to the assets freeze beyond the general guidance provided by the Security Council in paragraphs 1 (a), 2, 3 and 20 of its resolution 1735 (2006) and in earlier relevant resolutions. The Team has noted that some States are unclear as to what physical property and other non-monetary assets should be covered, beyond bank accounts. The Team has previously recommended that the Committee include on its website a non-exhaustive and non-binding list of assets that the private sector may, prima facie, assume to be covered by the assets freeze (S/2006/677, paras. 82-85). This would help to promote a consistent approach across jurisdictions and to make the assets freeze more effective. The Team has separately prepared a draft list for consideration by the Committee.

49. Member States and the private sector may also find it useful to have guidance on how to freeze different kinds of assets, and on dealing with property in which the listed party has only an interest or part ownership. As Member States build their experience in this area and find ways to freeze these assets without unduly affecting the interests of unlisted parties, the Team proposes that, with the approval of the Committee, it draw together current practices and develop draft guidelines that could be posted on the Committee's website.

[55] Removed from the List on 14 November 2007 (see Committee press release SC/9172).

C. Risk of swapping interests in frozen funds for goods or services

50. Submissions made under paragraphs 1 (a) or 1 (b) of Security Council resolution 1452 (2002) that seek agreement to pay for the provision of goods or services to a listed person can carry the danger that the amounts stated are inflated through an undisclosed arrangement between the supplier and the listed party. If approved, such payments would release funds that could then be used for other purposes. The Committee may wish in its guidelines to encourage States to scrutinize transactions accordingly, and to provide information that would help the Committee to decide if the funds sought were appropriate.

51. Also, in some cases, suppliers may have provided goods or services to a listed party before the State has decided whether it is appropriate to release frozen assets to pay for them. To guard against this, the Council may wish to encourage States to require listed individuals to obtain prior approval before acquiring such goods or services related to an application under resolution 1452 (2002), and to offer appropriate guidance on its website.

D. Treatment of incoming funds in favour of listed parties

52. Under paragraph 2 of Security Council resolution 1452 (2002), States may allow frozen accounts to be credited with interest or other earnings or payments due under contracts, agreements or obligations that arose prior to the date on which the accounts became subject to the assets freeze measure. However, there are other circumstances in which payments may arise and it is possible that precluding attempts to make payments outside the two categories mentioned in the resolution would prevent payers from fulfilling legal obligations to the listed person or third parties, causing them to incur liability.

53. Banks have told the Team that they are unsure of what to do if funds remitted to accounts frozen under the sanctions regime do not fall clearly under one of the two categories provided for in resolution 1452 (2002). In addition, it is not clear to them how — or if — they should make the determination that the funds sent to frozen accounts relate to contracts entered into prior to the listing. If they pass the decision back to the State to make, they must be able to hold the assets in a suspense account pending a reply. Given the administrative and legal difficulties involved, it is perhaps not surprising that banks have often returned such payments to the sender. Clearly there is a risk in these circumstances that the sender will alert the listed party, who may then make arrangements to receive the funds in a way that avoids the sanctions. The Team recommends that the Security Council consider widening the scope of paragraphs 2 (a) and 2 (b) of its resolution 1452 (2002) to allow all incoming payments in favour of listed parties to be credited to their frozen accounts.[56]

E. Scope of the assets freeze

54. Some States appear not to apply the sanctions to assets that a listed party may control, though not hold directly. The current provisions under the assets freeze

[56] At least one Member State has adopted such an approach in regard to another sanctions regime.

measure call on States to freeze the assets and economic resources "of" a listed party but give only limited guidance on what this means. The resolutions specify that assets include funds "derived from" property that is controlled "directly or indirectly" by listed persons, but are less clear about the property itself. They also leave open what States should do about companies and other entities that are not themselves listed but are controlled by listed persons, either directly or through proxies. Some States apply the assets freeze measure in such circumstances, others do not.

55. The counter-terrorism sanctions imposed by the Security Council in resolution 1373 (2001) address this issue; its assets freeze measure applies to the assets and economic resources not only of terrorist actors[57] but also of "entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities". The Team recommends that the Security Council consider similar provisions for the Al-Qaida/Taliban sanctions regime, or provide explicit guidance to States on this point, so as to promote a uniform approach and appropriate implementation.[58]

F. General indicators of terrorist financing

56. Banks and other financial institutions continue to ask their authorities what they should look for in order to spot possible terrorist-financing transactions by their customers. Banks must spend time and resources preparing and submitting suspicious activity reports and want to be sure that these are as useful as possible. Equally, official bodies, such as financial intelligence units, will not wish to be overwhelmed with reports that have no value. Some authorities have provided the private sector with general guidance, and others keep in close contact with banks to discuss current trends and experiences.

57. The fact remains, though, that terrorist financing follows no clear pattern, particularly for local cells which are raising money to support their own activities. Such cells are as likely to use their own money, legally acquired, as they are to make fraudulent transactions. Even among these, it is hard to spot a terrorist intent rather than a mere desire to make money. If banks are too proscriptive in deciding what to examine as a possible case of terrorist financing, they are just as likely to miss the use of new methods as they are to discover the use of old ones. Terrorists and their financiers will employ whatever method seems the easiest and most secure to raise, move and store their money, according to their circumstances.

58. However, the Team understands the desire for guidance and has consulted a range of Member States on this issue. To date, the information received tends to confirm its view that providing examples of terrorist financing may have more disadvantages than allowing experienced bankers to rely on their knowledge and their instinct for what appears odd. The closer that banks work with their financial

[57] That is, "persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts".

[58] In this regard, the Security Council, in resolution 1617 (2005), emphasizes "the obligation placed on Member States to implement in full resolution 1373 (2001) against the Taliban or Al-Qaida, and any individuals, groups, undertakings or entities associated with Al-Qaida, Usama bin Laden or the Taliban, who have participated in financing, planning, facilitating, recruiting for, preparing, perpetrating, or otherwise supporting terrorist activities or acts".

intelligence units, police and other counter-terrorist officials, the more all sectors will benefit.

G. Use of fraudulent identities to finance terrorism

59. One common fraud, also used by terrorists, is to obtain credit under a false identity. This is hard to detect and deal with but, in addition to national records, INTERPOL maintains a database of 15 million stolen or lost travel documents from 125 countries.[59] While access to the database is limited at present to law-enforcement agencies, it is clearly of increasing value as more countries provide information. Even where banks are able to check documents presented by customers with their local police, the INTERPOL database may not always be consulted. If more police forces used the database, or if certain bank officials were allowed access, there could be a lower incidence of fraudulent activity of this kind, including by people on the List. INTERPOL has informed the Team that it is in contact with bankers with a view to improving cooperation, including in regard to the database of stolen or lost travel documents. The Team expresses the hope that INTERPOL member countries will support this initiative.[60] The Committee and the Council may also wish to encourage States to share with the private sector information on their national databases which relates to stolen, lost and counterfeit identity documents pertaining to their own jurisdictions and, if a listed party is found to be using a false identity, to provide the details to the Committee.

VI. Travel ban

60. While it is hard to quantify the impact of the travel ban, it is an important part of the sanctions regime against Al-Qaida, the Taliban and their associates. Although the Internet and other means of communication allow Al-Qaida to assert and maintain a global presence, its leadership nonetheless appears under siege and remote, and the more the international community is able to restrict the movement of prominent Taliban and Al-Qaida leaders, the less they are able to exert their influence. The travel ban is even more effective as both a deterrent and a persuasive measure when applied to prominent financiers and other second-line supporters of Al-Qaida and the Taliban, who are unlikely to risk travelling illegally.

61. Member States are continually updating their border security, whether by enhancing procedures for checking travellers at points of entry, adopting more technically sophisticated travel documents, introducing better equipment to read passports or allowing access to central databases from border crossing posts. However, so far as the Al-Qaida and Taliban travel ban is concerned, these improvements are useful only when there is enough information available to the relevant officials to determine whether the person in front of them is on the Consolidated List.

62. Many of the 370 individuals currently on the List are unlikely to present themselves at an official border crossing post; they are either in detention, too well known to risk travelling legally or subject to an international arrest warrant.

[59] Source: www.interpol.int/Public/ICPO/FactSheets/GI04.pdf.

[60] See also the Team's fifth and seventh reports (S/2006/750, para. 89, and S/2007/677, para. 94).

However, there are others who are not wanted by any law-enforcement agency, who may not have ready access to false documents of sufficient quality to survive close scrutiny, and who may in any case calculate that the limited amount of personal detail recorded about them on the List makes it reasonably certain that they will be able to pass through border posts using their genuine documents without being noticed. As long as States impose no obligation on listed individuals to abide by the travel ban, they may see little risk in trying to avoid it.

63. Indeed, the Team knows of occasions when this has happened: for example, with a listed individual who was able to make several trips between Europe and Africa without being stopped (S/2007/132, box 6); no doubt there are many other violations of the travel ban. The example cited, where the List recorded a name that was not exactly the same as that written on the passport, also illustrates the importance of having as much detail as possible on the List. Even in this case, if the passport number had been recorded, it is far less likely that the individual would have been able to travel. It should not be difficult for States of nationality or residence to check what, if any, travel documents have been issued officially to listed parties and, if they are still valid, to report the details to the Committee for inclusion on the List. The Team suggests that the Committee urge States to do so.

64. As mentioned earlier in this report, there have been many updates to the List over the past year, and, to give them full effect, it is important that new versions of the List be circulated to border posts as soon as they are issued by the Committee. The Team has continued to conduct random checks at border points to assess the degree to which the Al-Qaida/Taliban List is included in national watch lists and has been generally encouraged to find that, more often than not, it is. However, some States require an administrative order or other legal process before they can enter updates to the List into their national watch lists, and this inevitably leads to a delay in implementation. The Team recommends that the Committee encourage Member States to ensure that their internal procedures allow the immediate incorporation of changes to the Consolidated List into their relevant national databases and watch lists and to notify border posts of such changes as soon as practicable.

A. INTERPOL-United Nations Security Council special notices

65. One mechanism that can help disseminate information on the List quickly is the use of INTERPOL-United Nations Security Council special notices, which now exist for just over 300 of the 370 individuals on the Consolidated List. INTERPOL updates these notices on a regular basis, and they are particularly useful at border posts because they increasingly contain photographs.[61] They are accessible through the INTERPOL website and can be printed and distributed, along with other law-enforcement information, to border posts that do not have an Internet connection. As the Team has noted above, it proposes that States make an effort to supply INTERPOL with photographs of more of the listed individuals and to submit any other detail of value to a border crossing point for inclusion in the notices.

66. The increasing use of the INTERPOL-United Nations Security Council special notices by Member States is encouraging, but one major problem has become evident as their usage has increased: when a border post or a law-enforcement body

[61] See para. 30 above.

considers that they may have come across someone identical to the subject of a special notice, there is no easy way for them to confirm this. An enquiry to INTERPOL will help only when INTERPOL can provide additional information through its own channels. Otherwise, it will need to contact the State or States that have submitted the information on the List to find out if any more identifiers exist. To do so, it will have to contact the United Nations Secretariat or the Team, which in turn will have to contact the Chair of the Committee, who will then have to contact the relevant Member State or States, which will then have to answer the query. It is unlikely that the border post concerned will be able to delay a decision for the time it takes to complete this process.

67. Such an incident occurred in February 2008, when an INTERPOL member country requested further information from INTERPOL on whether an individual seeking to enter the country was the same person appearing on a special notice. The State also asked for guidance with regard to its obligations in case the person was the same individual. INTERPOL approached the Team, which forwarded the request to the Chair of the Committee, who took prompt action in notifying the State that had submitted the name for listing, asking it to contact the requesting State directly to save time. However, if any information did get back to the original enquirer, it was too late. The State, unable to delay any further than it had, allowed the individual to enter.

68. Not only do such cases cause extra work for border posts but ultimately they result in adverse consequences for individuals who are not listed, or failure to implement sanctions against those who are. Furthermore, States will be less inclined to use special notices if they learn that these problems exist; conversely, they will use them more if they consider that they are well supported by the issuers, in this case the Committee and INTERPOL. The latter has commented that the more information contained in the special notices, especially fingerprints, photographs and passport numbers on the restricted versions which are available only to law-enforcement agencies in its member countries, the more useful they will be and the less likely that incidents like that mentioned above will occur. INTERPOL has also offered to provide guidance to its members on the scope of the sanctions regime. In addition, it has suggested that there should be a permanent enquiry point at the United Nations to deal with questions and ensure that relevant additional information on listed individuals is provided in a timely manner when made available by Member States.

69. The Team agrees that this idea is worth examining further, and not just to help with requests related to the travel ban directed through INTERPOL. There is a wider need to ensure that requests from Member States for information about listed persons attract a response. Such an enquiry point would complement the national help desks that the Team has previously recommended that Member States establish (S/2007/132, paras. 61-64, and S/2007/677, para. 138). Further, the Team suggests that where these national help desks exist, States publicize their contact details so that domestic law-enforcement bodies, as well as authorities in other States, know where to turn with questions about implementation.

70. When States do refuse entry or transit to an individual on the basis of a listing, or when a listed individual changes location as a result of the permitted exceptions to the travel ban, such as return to the State of nationality or movement in support of

a judicial process,[62] it would be useful for the Committee to know, so that it may update the List and record any new information that comes to light. The Team recommends that the Committee urge States to notify it in such cases. In the case of confidential information that a State may be reluctant to see appear on the List, the restricted version of the INTERPOL special notice may be an appropriate place to note it.

B. Other recommendations

71. The Team has made recommendations to the Committee concerning exemptions from the travel ban to ensure that States have clear procedures for approaching the Committee on behalf of listed individuals who may need to travel for humanitarian or other purposes. The Committee is considering these recommendations. It is also considering a recommendation that States should cancel any visa or residence permit for destinations to which an individual has travelled after being listed, and to return such individuals to the country in which they were at the time of listing, subject to appropriate exceptions at the determination of the Committee (S/2005/572, para. 122).

72. The Committee has agreed with other recommendations from the Team, such as: (a) that States adopt measures that ensure that a listed party cannot apply for a new travel document without giving details of the former one, and provide immediately the details of any new document issued to the Committee for entry on the List (S/2005/760, sect. V); (b) that States promote reporting by their citizens of the loss or theft of travel documents (S/2006/1047, para. 13); and (c) that States make a special effort to identify and submit for listing the names of people who provide stolen, fraudulent, falsified or counterfeit documents to listed individuals, on the basis that they thereby support and are associated with Al-Qaida, the Taliban or their associates (S/2008/16, para. 19). The Team now also recommends that the Council encourage Member States to ensure that stolen, lost, fraudulent, falsified or counterfeit travel documents are not only invalidated but removed from circulation when found and returned to the appropriate authorities of the State named as issuer.[63]

VII. Arms embargo

A. Implementation of the arms embargo

73. An important consequence of the arms embargo should be to force Al-Qaida, the Taliban and their associates to resort to the use of less efficient arms and related materiel with less sophisticated military skills. In most areas, controls put in place by Member States have forced Al-Qaida associates to improvise, and their lack of technical ability has led to failed plots or less damage than expected. It is only in

[62] In paragraph 1(b) of its resolution 1735 (2006), the Security Council stated that the travel ban should not apply where entry or transit was necessary for the fulfilment of a judicial process or the Committee established pursuant to resolution 1267 (1999) determined on a case-by-case basis only that entry or transit was justified.

[63] See also paragraph 3.42 of annex 9 to the Convention on International Civil Aviation (Chicago, 1944).

places such as Afghanistan, the Afghanistan-Pakistan border area, Iraq, small areas of the Philippines and Somalia that they have been able to sustain campaigns over a long period, supported by an active and ample logistical supply, military recruitment and training networks. The burden of implementation in these cases extends beyond the boundaries of the States concerned, including to States from which funds and arms originate and States whose nationals are involved in their supply.

B. Scope of the arms embargo

74. Although States are increasingly aware of their obligations under the arms embargo, most continue to view this measure largely as a requirement to control their arms exports through licensing, and to supplement such measures with general domestic arms regulations without any need to tailor them to the Al-Qaida/Taliban arms embargo. States may consider that the range of overlapping arms-related obligations that they enter into by virtue of their membership of the United Nations and other organizations and by their acceptance of relevant treaties provides the legal basis for full implementation of the arms embargo. However, the Team recommends that the Security Council and the Committee encourage States to make sure that domestic controls cover listed parties, and that they have adequate legislation to control their nationals and registered ships and aircraft beyond their national territory, as required by the relevant resolutions concerning Al-Qaida and the Taliban. The Committee may also seek ways to ensure that other international efforts on arms control recognize the provisions of the Al-Qaida/Taliban arms embargo.

C. Related materials

75. The Team has continued to gather the views of Member States on how the embargo could best be developed to have the most impact on the ability of Al-Qaida, the Taliban and their associates to carry out attacks. Aside from areas in which they lack the capacity to enforce the embargo, States are most concerned about dual-use materials, in particular ammonium nitrate.[64] The Team recommends that the Council clarify that "related material" under the arms embargo covers specified dual-use materials. This need not require a total ban on such materials, but States could be urged to prevent listed persons and entities from obtaining, handling, storing, using or seeking access to them. The Council could also encourage States to increase vigilance in the regulation, production, sale, supply, purchase, transfer and storage of such materials.[65]

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[64] The factor setting ammonium nitrate apart from other improvised explosives is its generally unrestricted availability in the large quantities necessary to manufacture a major explosive device.

[65] Several Member States in Europe and South-East Asia have already adopted such measures without relation to the arms embargo (S/2005/83, annex, para. 115, and information provided to the Team).

D. Illicit trafficking of arms by air

76. The prevention of the supply of arms and materiel by air to Al-Qaida, the Taliban and their associates is related to several other activities currently under discussion at the United Nations and in other international and regional organizations.[66] The Team considers that, in view of the challenges faced by individual States in dealing with this issue, it would be useful to engage such international organizations as the International Civil Aviation Organization (ICAO) and the International Air Transport Association (IATA), which deal with both official authorities and airline operators, and the World Customs Organization (WCO), which is the only intergovernmental organization working on the development of global customs standards.[67] Although the Team has already contacted these organizations at the working level, it considers that further progress may require a high-level agreement between them and the Committee, similar to the arrangement with INTERPOL (S/2007/677, para. 114).

E. Acquisition of arms by intermediaries and third parties

77. Most States utilize a licensing approach to implement the Al-Qaida/Taliban arms embargo, meaning that they simply ban all related exports unless specifically authorized by the relevant authority. In most cases, the relevant authority checks all importers against the Consolidated List and some States have adopted additional measures to ensure also that they are not associated with any listed individual or entity. Further, some States require that applicants agree not to transfer arms to any third party without an additional licence, which should guard against diversion to anyone on the List. Many other States have similar measures in regard to activities within their own territories; however, globally there is no consistent application or enforcement of the licensing approach. The Team has submitted a paper to the Committee on this issue.

F. Military training and recruitment as part of the arms embargo

78. Arms and military skills would be of no use to Al-Qaida, the Taliban and their associates if they did not have the personnel willing to use them. Indeed, in terms of fundamental military capabilities, the availability of human resources, including in particular trained veterans, may be a key determinant of success. The arms embargo does not explicitly cover this critical element and the Team recommends that the Security Council prohibit the provision of manpower to listed entities. Specifically, the arms embargo could require Member States to prevent persons on their territories, and their nationals outside their territories, from participating in the military or paramilitary activities of listed entities, including by receipt of arms, related materiel, military technical advice, assistance or training from them, or providing others to participate in such activities or facilitating their participation.

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[66] Including the special meeting on combating the illicit trafficking of small arms and light weapons by air, held by the Organization for Security and Cooperation in Europe in Vienna in March 2007.

[67] While there are several regional organizations which deal with customs standards, the World Customs Organization is, to the best of the Team's knowledge, the only international intergovernmental organization working on developing global customs standards.

79. The Council could also explicitly require Member States to prevent listed individuals and entities from having access to, establishing or maintaining military or terrorist training facilities inside their borders. This would reinforce their existing obligations under paragraph 2 of Security Council resolution 1373 (2001),[68] and develop the scope of the arms embargo to cover military and paramilitary training and recruitment comprehensively.

G. The Internet and the arms embargo

80. Al-Qaida, the Taliban and their associates use the Internet, among other things, to obtain technical advice, assistance and training related to military activity. Even though the instructions they can obtain online may not be sufficient for maximum effect to be achieved from their operations, which requires practical training and field exercises, by providing relevant material to skilled operatives in electronic format they can facilitate training that violates the arms embargo. While the Al-Qaida/Taliban sanctions regime already provides Member States with a basis to act against those who violate the arms embargo, including via the Internet, the Team recommends that the Council clarify that the arms embargo should be enforced also in the virtual world, meaning the prohibition of activities over the Internet that include the sale, supply or transfer of technical advice, assistance or training related to military activities for the benefit of those on the List, military or paramilitary recruitment and the provision of manpower to listed entities.

H. Military command and control networks and the arms embargo

81. The ability of commanders to exercise control, maintain situational awareness, and plan and coordinate their actions vertically and horizontally through the command structure is central to any military or paramilitary operation. Since Al-Qaida, the Taliban and their associates are engaged in such activity, they too must possess the necessary means to do so, including communications equipment. However, the sanctions regime does not explicitly target this crucial aspect of military capability, even though it is widely covered by the existing arms export and control regulations adopted by Member States and multilateral institutions.

82. While Al-Qaida, the Taliban and their associates may not maintain sophisticated structures and systems that provide operational control of their followers, they have nonetheless a functioning military capability, as indicated, for example, by the insurgency in Afghanistan. At the tactical and operational levels, Al-Qaida, the Taliban and their associates have used both military and civilian equipment, such as short-range radios and mobile and satellite telephones. Considering the limited means of effective communication available to Al-Qaida and its associates across their various areas of operation, the Internet and satellite telephones play a particularly important role.

[68] Many Member States have also relevant legal commitments by virtue of their participation in universal legal instruments against terrorism, such as the International Convention for the Suppression of Terrorist Bombings adopted by the General Assembly in resolution 52/164 of 15 December 1997.

83. The Team recognizes that Al-Qaida is likely to use less direct and more secure methods of communication, including couriers, for priority communications and for top-level leaders who cannot risk compromising their location. Nevertheless, it recommends that the Council consider the communications used by Al-Qaida and the Taliban emphasizing the need for Member States to prevent their nationals from engaging in the supply, sale, transfer or other provision of military command and control capabilities to Al-Qaida, the Taliban and their listed associates, whether through the Internet or by other means.

I. Other recommendations

84. The Committee has previously agreed with other recommendations from the Team such as: (a) that States oblige listed parties to abide by the sanctions (S/2007/677, para. 111); and (b) that their obligations regarding technical advice, assistance or training cover not only those who conduct, direct or provide technical advice, assistance or training for listed parties but also those who receive it from listed individuals or groups (S/2007/229, para. 18).

VIII. Activities of the Monitoring Team

A. Visits

85. The Team visited 13 Member States between October 2007 and March 2008. Six of these were follow-up visits and five were to States not previously visited. Two were made jointly with the Counter-Terrorism Committee Executive Directorate. A member of the Team also accompanied the Chairman of the Committee on his visit to three States in Central Asia in October and November 2007.

86. The Team's follow-up visits, especially those made to close partners in the Arab world, confirm that Al-Qaida and its associates continue to present real challenges. For example, the difficulty of policing borders in the Sahel-Sahara region has allowed AQIM* and its associates to move freely, to raise money from smuggling, to acquire arms and explosives and to train new recruits in relative safety. The visits have resulted in the submission of additional information on listed names and have confirmed the desire of Member States to benefit from a more interactive relationship with the Committee, including by receiving more information on the basis for listing, and to enhance the technical and legal knowledge of officials as to the meaning and scope of the sanctions measures.

87. The Team's first visits to five States allowed it to identify issues concerning implementation and to explain the sanctions regime in detail, as well as to collect more information about the threat. In two countries, the Team was able to hold a sanctions workshop for officials concerned with implementation. An issue that often arises during such discussions is how to ensure the circulation of the Consolidated List to all appropriate officials and the private sector; another is the legal basis necessary to implement the sanctions regime.

B. Talks and meetings

88. The Team's participation in subregional, regional and international meetings allows it to explain the work of the Committee and recent developments in the sanctions regime. Where necessary, the Team can also explain the distinctions between the Committee and the Counter-Terrorism Committee. The Team has attended specialist meetings on sanctions implementation, on countering the financing of terrorism and on the legal challenges facing States as a result of actions taken against listed parties. All such meetings provide the Team an opportunity to explain the obligations placed on States by the relevant resolutions and to relay their concerns back to the Committee.

89. Among other conferences and meetings, the Team took part in the workshop on combating incitement to terrorism on the Internet, convened in November 2007 by the Action against Terrorism Unit of the Organization for Security and Cooperation in Europe (OSCE), and in the information technology and national security conference held in Saudi Arabia in December 2007. Both meetings confirmed the widespread concern at the use of the Internet for terrorist purposes, in particular in regard to propaganda, recruitment and training. Participants discussed the actions taken at the national and regional levels to improve their understanding of the phenomenon and exchanged views on how to counter it. All agreed on the need for more effective action and international cooperation, but also acknowledged the legal, technical, social and political complexity of the issues involved. These meetings allowed the Team to update two papers it had earlier prepared for the Committee on the use of the Internet by Al-Qaida and its associates.

C. Regional meetings with intelligence and security services

90. The Team has held three meetings for intelligence and security service chiefs since presenting its previous report at the end of September 2007: one at the United Nations Office at Vienna to discuss core issues to do with Al-Qaida-related terrorism across the Middle East, North Africa and South Asia; one in the Sudan to discuss Al-Qaida-related activities in Somalia; and one in the Philippines to discuss Al-Qaida associates in South-East Asia.

91. The meeting held in Vienna was the sixth that the Team has convened for the heads and deputy heads of intelligence and security services from selected countries in the Middle East, North Africa and Pakistan. Seven States attended: Algeria, Libyan Arab Jamahiriya, Morocco, Pakistan, Saudi Arabia, United Arab Emirates and Yemen. Egypt and Jordan were invited but could not attend. The participants agreed on the resilience of the threat from Al-Qaida, which they saw developing local and regional groups and targeting ever younger people (i.e., 14-17 years old) for recruitment. They expressed concern at the extensive use of the Internet by Al-Qaida and its associates, at the irresponsibility of some media outlets in their coverage of sensitive issues and at terrorist use of satellite telephones. While stressing the key importance of regional and bilateral operational cooperation, they also emphasized the need to combat Al-Qaida-related terrorism within the framework of the United Nations, and reiterated their support for the Committee and the Team. They called for more decisive action by the United Nations generally on factors conducive to terrorism, such as Islamophobia. They also stressed the need to avoid exclusively repressive policies, develop programmes for rehabilitation and to

counter radicalization, promote the fair political solution of conflicts that are of particular importance to Arab and Muslim public opinion, and support economic development.

92. The meeting held in the Sudan brought together the intelligence and security services of Djibouti, Ethiopia, Kenya, Saudi Arabia, the Sudan, the United Republic of Tanzania, the United Arab Emirates and Yemen. It noted that the Al-Qaida leadership had spoken publicly of Somalia as an area in which its supporters should intensify their efforts, and identified several individuals and entities that might merit submission to the Committee for listing, including Al-Shabab, which has claimed responsibility for more than 20 attacks since September 2007. All participants agreed that the United Nations in general, and the Committee in particular, had an important role to play in providing an overall framework for action. They also agreed that the meeting had allowed them to exchange views and information in an atmosphere of collaboration and common purpose.

93. At the meeting concerning South-East Asia, which was held in Manila and attended by Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, Thailand and Viet Nam, participants agreed that much progress had been made in the region, in large part because of the effective de-radicalization and rehabilitation programmes initiated by several Governments. Nonetheless, the meeting agreed that there was no room for complacency and that operational work at both the national and regional level remained an essential way to keep the Al-Qaida-related threat in check. There were several suggestions concerning improvements to the Consolidated List, and the participants agreed that the Committee played an important role in the overall effort to curb the growth of Al-Qaida-related terrorism in South-East Asia.

D. International and regional organizations

94. In 2006, the Committee agreed on a strategy for cooperation with key international, regional and subregional organizations, which was updated in April 2007. In pursuit of the strategy, the Team has established cooperation with several organizations, such as OSCE, in particular its Action against Terrorism Unit, WCO, ICAO, IATA and INTERPOL. Contact with these and other organizations, such as the International Maritime Organization and the African Centre for the Study and Research on Terrorism of the African Union, has highlighted the need for the Team, the Counter-Terrorism Committee Executive Directorate and the experts supporting the Security Council Committee established pursuant to resolution 1540 (2004) to develop a common strategy.

95. The Team recommends that this common strategy cover such areas as the dissemination of information on the work and mandate of the three committees and their expert groups and the adoption of a common approach to relevant international and regional organizations so as to get a better idea of regional and subregional problems in implementing Security Council resolutions dealing with terrorism. This is an area in which coordination with the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate is of particular relevance because of the importance of addressing the assistance needs of States.

E. Cooperation between the Security Council and INTERPOL

96. As stated above, States are increasingly aware and supportive of the INTERPOL-United Nations Security Council special notices. In addition to law-enforcement agencies, which have access to a fuller, restricted version of the notices through the INTERPOL secure global communications system (I-24/7), banks and other financial institutions have used them to help check their customers against listed names and avoid false positive identifications. By the end of March 2008, the number of special notices issued for listed individuals stood at just over 300.[69]

97. For about 140 of these individuals, INTERPOL databases have contributed additional identifying information such as aliases, other dates or places of birth, and photographs or fingerprints. Over 80 photographs have now been added to the notices, and nearly 40 sets of fingerprints are available in the restricted law-enforcement sections. More than 10 per cent of individuals on special notice are also the subject of INTERPOL red notices, and over 5 per cent have been the subject of INTERPOL diffusions.[70] Four of the red notices were issued by Member States following the publication of special notices on the basis of membership of an unauthorized organization. These actions suggest that there is increasing use of the special notices by Member States as a tool for linking national operations with the global framework of the Al-Qaida and Taliban sanctions regime. During the period under review, the cooperation between the Committee and INTERPOL reached another milestone with the decision to issue special notices for entities. INTERPOL will begin to publish them in the near future.

F. Cooperation with other Security Council committees

98. As stated in its previous reports, the Team and the expert groups that support the Counter-Terrorism Committee and the Security Council Committee established pursuant to resolution 1540 (2004) submitted to their respective committees in September 2006 a common strategy paper designed to assist States that were behind in reporting to the Council. The strategy focused on a subregional and regional outreach approach and, in February and March 2007, the three committees agreed to start work on this basis, beginning with the African region.

99. Under the common strategy, the three expert groups, working together with the United Nations Office on Drugs and Crime, specifically its Terrorism Prevention Branch as facilitator, agreed to organize a series of workshops in Africa for officials who are involved in the implementation of the relevant Security Council resolutions or responsible for preparing reports to the three committees. Such workshops allow the expert groups to explain the reporting requirements imposed by the relevant Security Council resolutions and to address the specific concerns of the participants in order to help them prepare their responses to the three committees.

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[69] From April to December 2007, there were approximately 1,500 hits per month on the public version of the special notices web page.

[70] INTERPOL red notice: a request from a national central bureau to the INTERPOL General Secretariat to circulate information to all its member countries to seek the arrest or provisional arrest of an individual with a view towards extradition based on a national arrest warrant. INTERPOL diffusion: a message (without photographs or fingerprints) transmitted from one country to another or others to seek the arrest or provisional arrest of an individual with a view towards extradition based on a national arrest warrant.

100. The first workshop was held in Senegal in September 2007 for 23 West and Central African States. The second workshop was held in Botswana in November 2007 for the 14 member States of the Southern African Development Community, as well as Seychelles and the Comoros. Since all States participated at an appropriate level, the workshops allowed for serious dialogue on the challenges faced in the implementation of the Al-Qaida and Taliban sanctions measures. A third workshop is planned for the remaining 14 North and East African States in the second half of 2008. In this manner, all African States will be covered under the common strategy.

101. The Team's assessment from the workshops so far is that effective implementation in many States has been hindered by the fact that officials on the ground who have to implement the measures lack a clear understanding of the scope of national obligations under the sanctions regime. The Team expresses its hope that the papers which provide an explanation of terms for all three sanctions measures, currently available on the Committee website or under preparation, will help to resolve this matter.

102. Some States have also expressed concern that they might be judged as non-compliant with the measures because they lack the capacity to implement them fully; others highlighted competing claims on their limited resources, and there was a general feeling that such issues were not sufficiently addressed by the Security Council. The Team has no mandate to deal with the provision of technical assistance, but reassured all participants that it would continue to collect information submitted by States on their assistance needs in relation to the Al-Qaida and Taliban sanctions regime and to forward it to the Counter-Terrorism Committee Executive Directorate for action.

103. The three expert groups have continued to cooperate and coordinate action following the two workshops. With the assistance of the United Nations Office on Drugs and Crime liaison office in New York, they provided a post-workshop briefing to the 23 West and Central African States on return from Senegal, and to all United Nations permanent missions of the members of the African Union following the second workshop.

104. At the same time, the three expert groups continue to coordinate their approach to States that need assistance with their reporting obligations in Asia and the Pacific, and Latin America and the Caribbean. The common strategy proposals for these States include working with the United Nations Office on Drugs and Crime and with other Member States through a consultant. The three expert groups maintain regular contact with one another and with the United Nations Office on Drugs and Crime in order to review the reporting status of these States.

105. The Team continues to coordinate its travel plans with the Counter-Terrorism Committee Executive Directorate and to exchange information prior to and after their respective trips. The Team has now made nine joint visits with the Directorate, and although such joint trips allow less in-depth discussion of issues specific to the sanctions regime, they are useful in allowing a full explanation of action taken by the Security Council to counter terrorism for officials who may be unfamiliar with its range and confused about the differences between the Committee and the Counter-Terrorism Committee.

IX. Reporting by Member States

A. Reports submitted under resolution 1455 (2003)

106. The submission by the Comoros of its report on 29 February 2008 brought the number of reports received under resolution 1455 (2003) to 153.

107. Resolution 1455 (2003), in which the Security Council called upon all States to submit a written report to the Committee, was intended to help the Committee to make an assessment of the overall status of implementation. In paragraph 17 of its resolution 1617 (2005), the Security Council called upon the Committee to provide the Council with an updated written assessment of the actions taken by Member States to implement the sanctions; this assessment was submitted to the Council in December 2006 (S/2006/1046).

108. Between January 2007 and March 2008, only four additional States, including the Comoros, submitted their reports under resolution 1455 (2003).[71] It is unlikely that the Committee will wish to update its assessment to the Security Council based on such a small sample. Furthermore, some of the remaining non-reporting States may well be States from which the Committee most needs to hear. The reports submitted under resolution 1455 (2003) are one of the best ways for Member States to inform the Committee of the gaps and challenges they encounter in their efforts to implement the sanctions measures; without this information, these problems remain unaddressed and the impact of the sanctions measures is undermined. Given the importance of these reports, the Team recommends that the Committee consider approaching each of the remaining 39 non-reporting States, or meet them within their regional or subregional groupings: Asia (7), Africa (23), and Latin America and the Caribbean (9). In the meantime, the Team will continue its own efforts to engage with non-reporting States wherever possible.[72]

B. Checklist

109. The purpose of the checklist was not to introduce another reporting round but to provide a means by which the Committee could remind States of the need to ensure the implementation of the sanctions measures against new names added to the List. Although the Security Council in paragraph 10 of resolution 1617 (2005) suggested that the Committee would ask for further completed checklists, only one was ever requested. Between 31 January 2006, the end of the checklist reporting period, and 31 March 2008, there were 41 updates to the List. In addition to the many changes to identifying information, 32 new names have been added, 15 names removed and 2 names merged.

110. The number of checklists received is at present 58, leaving 134 States yet to report, two years after the deadline of 10 March 2006. Since then, much of the information regarding the 24 names referred to in the checklist has changed. Six of the names are no longer the same, permanent reference numbers and versions of the

[71] For 2007, Tuvalu, Uruguay and Vanuatu. For 2008, the Comoros.

[72] The Team notes that 36 of these 39 States have also not reported to the Committee under the previous resolutions, but all have submitted at least one report to the Counter-Terrorism Committee; 27 are late in submitting reports to all three committees.

names in their original script have been added, and one name has been removed from the List.

111. The Team does not recommend reissuing the checklist, but as the Committee still needs updated information from Member States on changes to their legal framework for implementation, the legal challenges they may have faced, and additional or new action taken with regard to freezing assets or the movement or location of listed individuals, the Team considers that a substitute reporting tool would be useful. It has accordingly made several suggestions to the Committee for a new mechanism that States could use on a voluntary and informal basis. The suggestions remain under consideration by the Committee.

X. Other issues

Committee's website

112. The Team has previously reported many additions to the Committee's website. However, Member States are not always aware of these new documents and of web links designed to help them to understand their obligations under the Al-Qaida and Taliban sanctions regime and to offer advice for more effective implementation.[73] Some Member States have said that they have been unable to locate key documents and that prior familiarity with the website is required to use it effectively. The Team therefore recommends that the Committee advertise the changes to its website and the key documents it contains in a single-page format or as a one-page index for ease of reference by Member States and international and regional organizations. A possible example is attached as annex II to the present report. The Committee may also see value in introducing an appropriate tool, such as a hit counter, to track the use of its website and to ensure that it is fulfilling its intended purpose.

[73] For example, the explanation of terms concerning the arms embargo; the guidance for making searches of the List; the five fact sheets on listing, de-listing the exemptions from the travel ban, assets freeze and updating the Consolidated List; and the INTERPOL-United Nations Security Council special notices on the INTERPOL website.

Annex I

Litigation by or relating to individuals on the Consolidated List

1. The number of past and present legal challenges to the sanctions known to the Monitoring Team remains at 26.[a]

European Union[b]

2. The field of legal challenges remains dominated by appeals before the Court of Justice of the European Communities by Yasin Abdullah Ezzedine Qadi (QI.Q.22.01) and Barakaat International Foundation (QE.B.39.01). Pending decision on these two cases, appeals by Shafiq ben Mohamed ben Mohamed al-Ayadi (QI.A.25.01) and Faraj Faraj Hussein al-Sa'idi (QI.A.137.03) remain stayed. The case brought by Uthman Omar Mahmoud (QI.M.31.01) in 2001 remains pending before the Court of First Instance,[c] as do the four cases brought in 2006 by Abd al-Rahman al-Faqih (QI.A.212.06), Sanabel Relief Agency Limited (QE.S.124.06), Ghuma Abd'Rabbah (QI.A.211.06) and Tahir Nasuf (QI.N.215.06).[d]

3. Also notable is a recent opinion by the Court of Justice of the European Communities in a case involving an attempted transaction with a listed person. In *Möllendorf*, the Court, on request for a preliminary ruling from a German court, considered whether sellers of real estate to a partnership including Aqeel Abdulaziz Aqeel al-Aqeel (QI.A.171.04) were precluded by European sanctions regulations from registering the change of ownership in a land registry even though the sale contract for the property and agreement to transfer ownership had been concluded before Aqeel* was listed. The court concluded that article 2(3) of regulation EC 881/2002, which provides that "[n]o economic resources shall be made available, directly or indirectly, to, or for the benefit of a listed person so as to enable that person, group or entity to obtain funds, goods or services", prohibited the registration.[e] The Court of Justice referred back to the German court the question of whether a requirement under national law that the sellers refund the purchase price for such an incomplete sale disproportionately infringed their right to disposal of property.[f]

Pakistan

4. The action brought by the Al Rashid Trust (QE.A.5.01) continues in the Supreme Court of Pakistan on the Government's appeal from a 2003 adverse decision. The challenge brought by the Al-Akhtar Trust International (QE.A.121.05) continues before a lower court.[g]

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[a] The Team's seventh report contained a list of cases as at 30 September 2007 (S/2007/677, annex I).

[b] Cases and judgements available at curia.europa.eu/en/content/juris/index.htm.

[c] Case T-318/01, Uthman v. Council and Commission.

[d] Respectively, Cases: T-135/06, Al-Faqih v. Council; T-136/06, Sanabel Relief Agency Ltd v. Council; T-137/06, Abd'rabbah v. Council; and T-138/06, Nasuf v. Council.

[e] Case C-117/06, judgement of 11 October 2007, in particular paras. 11, 60 and 80.

[f] Ibid., in particular paras. 60 and 74-80.

[g] Information provided by authorities in Pakistan; see also S/2007/677, annex I, para. 4.

Switzerland

5. On 14 November 2007, the Federal Tribunal in Lausanne, the highest court in Switzerland, rejected the challenge by Youssef Nada Ebada (QI.E.53.01) to the imposition of sanctions against him.[h] Nada has indicated that he will challenge this decision before the European Court of Human Rights.[i] A similar suit by Ali Ghaleb Himmat (QI.H.43.01) remains pending before the Federal Tribunal.[j]

Turkey

6. Following the de-listing of Nasco Nasreddin Holding A.S. (QE.N.81.02) on 14 November 2007,[k] Turkey's Council of Ministers in January 2008 amended domestic decrees to remove this entity from sanctions. However, the company's challenge to the sanctions remains pending on appeal before Turkey's Administrative Cases Bureau, the highest reviewing body for challenges to Cabinet decisions.[l] Yasin Abdullah Ezzedine Qadi* has asked that same tribunal to reconsider a February 2007 decision upholding the freezing of his assets.

United States of America

7. In the challenge by the Al-Haramain Foundation (United States of America) (QE.A.117.04) to alleged unlawful government surveillance (S/2007/677, annex I, para. 10), the appellate court held on 16 November 2007 that the state secrets privilege asserted by the Government prevented the case from going forward, unless the plaintiffs could demonstrate that national surveillance laws pre-empted it, and remanded it to the lower court for further proceedings on this issue.[m] The Government has moved for dismissal or summary judgement of the separate action filed by the same organization in federal district court in Oregon.[n] Al-Haramain's response to the motion is due on 24 April 2008.[o]

8. The case brought by former Al-Haramain chairman Aqeel Abdul Aziz al-Aqeel* remains pending in federal district court, awaiting the court's decision on the Government motion to dismiss.[p] Finally, a grand jury has returned an indictment against listed individual and former Al-Haramain officer Suliman Hamd Suleiman al-Buthe (QI.A.179.04). The indictment charges Al-Buthe* with smuggling cash and negotiable instruments out of the country.[q]

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[h] Case 1A.45/2007, judgement available on the website of the Federal Tribunal of Lausanne at www.bger.ch/index/jurisdiction/jurisdiction-inherit-template/jurisdiction-recht/jurisdiction-recht-urteile2000.htm.

[i] Information provided by authorities in Switzerland.

[j] Ibid.; see also S/2007/677, annex I, para. 5.

[k] See Committee press release SC/9172.

[l] Information provided by authorities in Turkey.

[m] Al-Haramain Is'amic Foundation v. Bush, 507 F.3d 1190, 1202-04 (9th Cir. 2007).

[n] Information provided by authorities in the United States of America; see also S/2007/677, annex I, para. 9.

[o] Information provided by authorities in the United States of America.

[p] Ibid.; see also S/2007/132, annex I, para. 12.

[q] United States of America v. Al-Buthe, CR 05-6008-HO (United States District Court, District of Oregon, 21 September 2005).

Annex II

Selected documents of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban

Committee home page, general information and most recent news

www.un.org/Docs/sc/committees/1267Template.htm

www.un.org/sc/committees/1267/information.shtml

www.un.org/sc/committees/1267/latest.shtml

E-mail addresses for the Committee and the Monitoring Team

SC-1267-Committee@un.org

1267mt@un.org

Resolutions and guidelines on the conduct of the work of the Committee

www.un.org/sc/committees/1267/resolutions.shtml

www.un.org/Docs/sc/committees/1267/1267_guidelines.pdf

Consolidated List and guidance for searching the List

www.un.org/Docs/sc/committees/1267/consolist.shtml

www.un.org/sc/committees/1267/pdf/sguidance.pdf

Fact sheets on listing, updating the List and standard form for submissions

www.un.org/sc/committees/1267/fact_sheet_listing.shtml

www.un.org/sc/committees/1267/fact_sheet_consolidated_list.shtml

www.un.org/sc/committees/1267/pdf/coversheet.pdf

Fact sheets on de-listing, the focal point and standard form for de-listing requests

www.un.org/sc/committees/1267/fact_sheet_delisting.shtml

www.un.org/sc/committees/dfp.shtml

www.un.org/sc/committees/1267/pdf/De-listing%20form%20-%20English.pdf

Note verbale on procedures for removing deceased persons from the List

www.un.org/sc/committees/1267/deceased_individuals.shtml

Exemptions from the travel ban and assets freeze

www.un.org/sc/committees/1267/fact_sheet_travel_ban.shtml

www.un.org/sc/committees/1267/fact_sheet_assets_freeze.shtml

Arms embargo explanation of terms paper

www.un.org/Docs/sc/committees/1267/ArmsEmbargo.ExplanationTermsEng.pdf

Experience of Member States in implementing the Al-Qaida and Taliban sanctions measures

www.un.org/sc/committees/1267/ExperiencesofMemberStates.pdf

INTERPOL-United Nations Security Council special notices

www.interpol.int/Public/NoticesUN/Default.asp

United Nations S/2008/325

Security Council

Distr.: General
14 May 2008
English
Original: Arabic

Letter dated 11 May 2008 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council

The perfidious aggression of 10 May 2008 against the Sudanese capital by the Justice and Equality Movement (JEM), which was planned, financed and carried out by Chad, is irrefutable confirmation of the veracity of the detailed and accurate information that I have conveyed to you in previous letters. The seven letters my Government addressed to you in 2008 regarding this matter detailed the conspiracy the Government of Chad embarked upon in coordination with JEM. The shameful outcome of that conspiracy was the devastating and suicidal attack perpetuated on the capital, Khartoum, by hired groups that had infiltrated as far as the city of Um Durman. This unprecedented attack on Sudanese territory and the safety and security of its citizens by our neighbour, Chad, using a proxy force of mercenaries and foreigners, confirms the veracity of the information that we have provided the Council over the past months.

As a result of our careful monitoring, the Council has been apprised of the details of this evil plan ever since the Chadian Government and the so-called Justice and Equality Movement began preparing it in January 2008. In my letter of 9 January, I informed you that, in a speech delivered on 5 January at Independence Square in N'Djamena (a copy of which was provided to you), Idriss Deby Itno, the President of Chad, declared that the Chadian armed forces would attack targets inside the Sudan. In my letter of 19 March, following the signing of the Dakar Agreement between the Sudan and Chad, I informed you that, Chad would typically fail to implement agreements. Chad committed its first flagrant violation of that agreement when it began dispatching elements of JEM — including those that betrayed and killed the African Union troops at Haskanita — to engage in acts of sabotage in the Sudan, after President Itno had personally seen to it that they were provided with support in the form of weapons and heavy military equipment.

Chad continued to plan its aggression, which was being monitored by our specialized agencies, stepping up its efforts after the signature of the Dakar Agreement. The Government of Chad hosted a meeting of the Darfurian rebel groups in the Abu Nabaq area from 22 to 24 March 2008. In my letter of 27 March, I informed you that the insurgent Khalil Ibrahim, the head of JEM, had participated in the meeting. At that meeting, it was decided that the Chadian Government would provide additional military and logistical assistance from the Chadian cities of Abashi and Gereida in support of military operations against targets in Darfur and the Sudanese state of Kordofan. I then informed you, in my letter of 31 March, that President Itno continued to personally coordinate with JEM leadership in

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preparation for military operations against Dongola and other cities in the northern province; the Chadian Government had already provided 156 Land Cruisers laden with the military equipment required to carry out the attack, including anti-aircraft missiles. In my letter of 14 April, I informed you of a battle that took place at Jabal Kushkush between our armed forces and a group of 50 Land Cruisers, accompanied by infantry and horsemen, that had crossed the border from Chad. I also recently informed you, in my letter of 5 May, of another shipment of military aid provided by Chad as part of this evil plan.

The pace of preparations quickened in mid-April 2008, after which Chadian aid was delivered across the border to the insurgent Ibrahim Khalil, who managed to transfer a number of Land Cruisers to the borders of Northern Kordofan state, gathering them around the outskirts of the cities of Um Badir, Sodari, Hamrat al-Shaykh, al-Nuhud, Um Sayyalah and al-Ubbayed in Northern Kordofan. Some elements and their vehicles were observed on the road linking Dongola with Abu 'Agil, where they clashed with our armed forces, as well as at Sodari and Jabrat al-Shaykh in the state of Northern Kordofan, which is adjacent to Khartoum.

With the complete support of President Itno, the attacking forces were gathered, equipped and prepared at Abashi, moving out on 18 April 2008 in order to carry out the attack. After the forces had completed their assembly at Um Jaras on 28 April, President Itno spoke to them, urging them to achieve the goal of attacking and occupying the Sudanese capital.

Chadian aggression reached its peak on 10 May when Chad incited those mercenaries to embark on the suicidal, doomed and reckless attempt to infiltrate into the capital, Khartoum. Supported by transport, fuel, ammunition and anti-tank and anti-aircraft guns, the attack was aimed at hitting and destroying vital installations in Khartoum and terrorizing civilians. The attackers were met with resolute force by the Sudanese armed forces, acting in defence of the sovereignty of the Sudan, its territory and the security of its citizens. Our armed forces captured vast quantities of weapons, ammunition and other military equipment bearing the insignia of the Chadian Government. Many of the deluded attackers who were captured confessed irrefutably that they were Chadian nationals, thus confirming that the Chadian Government had planned and orchestrated this heinous attack from beginning to end. The Chadian dead were identified by means of their identity documents. It should be noted that the main leaders of the attack were important and well-known officers of the Chadian army, such as Muhammad Salih Jarbu, who was killed at the beginning of the operation, Jadu and Muhammad Darbu, as well as the officer Bisharah Abdallah Fadl, who was also killed in the fighting. Attached to this letter are copies of Fadl's identification cards — one identifying him as a Chadian national and the other as a member of JEM (see annex). This is but a single example that clearly demonstrates that JEM has become an arm of the Chadian security apparatus.

We should also like to inform the Council that, in complicity with JEM, Chad employed a number of underage children in this attack, including Chadian children. They are currently being transferred by the armed forces into the custody of the National Council for Child Welfare of the Ministry of Social Affairs prior to notification of the Red Cross, as required by international law in such situations.

What is truly regrettable is that Chad took these actions despite high hopes that it would adhere to the Dakar Agreement, an agreement to which the Sudan has

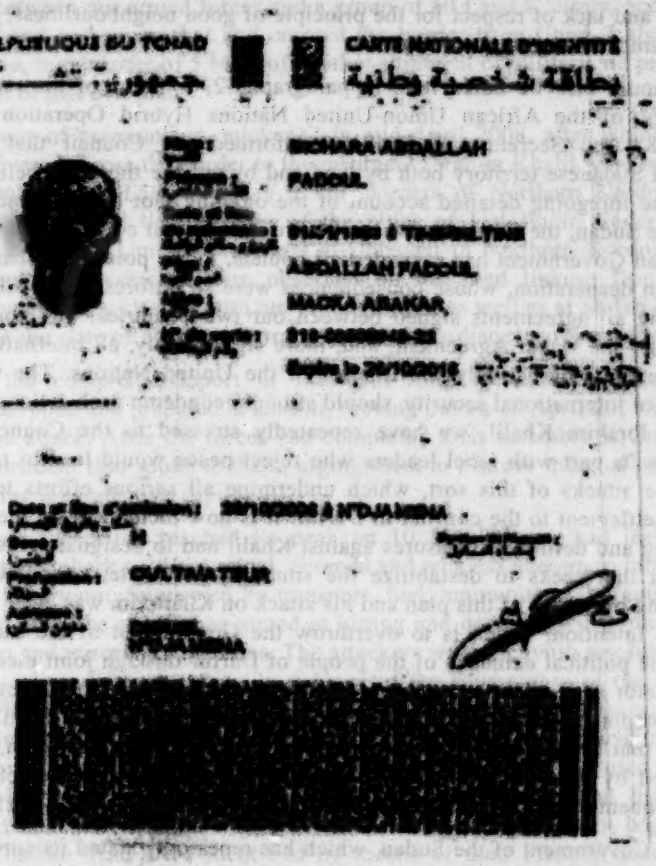
closely adhered. It was on the basis of that agreement that we participated in the meetings of the contact group at Libreville and the Tripoli meeting that followed, while preparations were under way for the next ministerial meeting. Thus Chadian complicity in the failed attack against Khartoum not only reflects Chad's ill intentions and lack of respect for the principle of good neighbourliness, but also its utter contempt for regional mechanisms.

It should also be noted that, in paragraphs 2, 3 and 4 of his report on the deployment of the African Union-United Nations Hybrid Operation in Darfur (S/2008/98), the Secretary-General had informed the Council that Chad had penetrated Sudanese territory both by land and by air. We therefore believe that, in light of the foregoing detailed account of the ongoing plot by the Chadian regime against the Sudan, the Council now has before it sufficient conclusive evidence that the Chadian Government has exceeded all bounds, to the point of embarking on an act of such desperation, whose consequences were so unforeseeable. Chad persists in violating all agreements signed between our two countries, the most recent of which being the Dakar Agreement, and, more significantly, all international norms and agreements, particularly the Charter of the United Nations. The Council, as custodian of international security, should strongly condemn such actions. As for the insurgent Ibrahim Khalil, we have repeatedly stressed to the Council that any laxness on its part with rebel leaders who reject peace would lead to reckless and destructive attacks of this sort, which undermine all serious efforts to achieve a political settlement to the conflict in Darfur. It is now incumbent on the Council to take strong and definitive measures against Khalil and to designate JEM a terrorist movement that seeks to destabilize the situation and to terrorize civilians. The undertaking by Khalil of this plan and his attack on Khartoum was clear evidence of his stated intention, which is to overthrow the Government of the Sudan, not to achieve the political demands of the people of Darfur through joint mediation. In a meeting with a delegation on 18 April 2008 in the Um Sadayrah region, Khalil rejected mediation, claiming that he was now the sole leader in the field. Falsely believing that he could achieve his goals, his attack against Khartoum, which was condemned by the international community, was designed to pre-empt and rebuff any subsequent efforts aimed at peacefully resolving the question of Darfur.

The Government of the Sudan, which has repeatedly stated its commitment to the agreements it has signed and to a policy of good neighbourliness, exercised great self-restraint and followed the path of reason as it closely monitored the increasingly flagrant plans of aggression by its neighbour Chad, reiterates that Chadian policies and practices seek to undermine all efforts to peacefully resolve the question of Darfur. They gravely threaten regional peace and security, and should be dealt with firmly in order to prevent that from happening. The Sudan should like to emphasize that it reserves the right to defend its territory and citizens in accordance with the Charter of the United Nations. Finally, I should be grateful if you would have this letter circulated as a document of the Security Council.

(*Signed*) Abdalmahmood Abdalhaleem **Mohamad**
Permanent Representative of the Republic of the Sudan
to the United Nations

Annex to the letter dated 11 May 2008 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council



رقم العضوية

حركة العدل و المساواة السودانية

Sudan Justice & Equality Movement (JEM)

الإسم : بشاه عبدالله عقيل

Name :

السمة : السفارة السودانية

Position :

إسم الأم :

Mother's name :

مكان و تاريخ الميلاد : [illegible]

Place and Date of Birth :

تاريخ الإصدار 1/ 1/ 2006

Issue Date

حركة العدل و المساواة السودانية

Sudan Justice & Equality Movement (JEM)

The Sudan Justice and Equality Movement (JEM) requests in the name of Justice Equality Humanity and Humanity of those Concerned to afford the bearer every Possible Assistance and Protection, and to allow him / her free Passage without let or Hindrance

تطلب حركة العدل و المساواة السودانية من كل من يهمه الأمر توفير العدل و المساواة و الأخلاق و الإنسانية مساعدة حامل هذه البطاقة و توفير الحماية له أينما وجد ولا عائق دفاعه

www.sudanjem.com

United Nations S/2008/326

Security Council

Distr.: General
14 May 2008

Original: English

Letter dated 13 May 2008 from the President of the International Tribunal for the Former Yugoslavia addressed to the President of the Security Council

I am pleased to transmit herewith the assessments of the President (see annex I) and of the Prosecutor (see annex II) of the International Criminal Tribunal for the Former Yugoslavia, pursuant to paragraph 6 of Security Council resolution 1534 (2004).

I would be grateful if you could transmit these assessments to the members of the Security Council.

(*Signed*) Fausto Pocar
President

08-34039 (E) 290508

Annex I

[Original: English and French]

Assessment and report of Judge Fausto Pocar, President of the International Tribunal for the Former Yugoslavia, provided to the Security Council pursuant to paragraph 6 of Security Council resolution 1534 (2004)

1. This report is submitted pursuant to Security Council resolution 1534 (2004) adopted on 26 March 2004 in which the Council, in paragraph six of the resolution, requested the International Tribunal for the Former Yugoslavia ("International Tribunal") "to provide to the Council, by 31 May 2004 and every six months thereafter, assessments by its President and Prosecutor, setting out in detail the progress made towards implementation of the Completion Strategy of the International Tribunal, explaining what measures have been taken to implement the Completion Strategy and what measures remain to be taken, including the transfer of cases involving intermediate and lower rank accused to competent national jurisdictions".[1]

I. Introduction

2. Out of the 161 Accused indicted by the International Tribunal, only six Accused remain in the pre-trial stage awaiting the commencement of their trials, and a further four Accused are still at large. A total of 28 Accused are presently in the course of trial – the highest number since the International Tribunal's establishment - and another nine have appeals pending. All other cases have been completed. It is presently estimated that all but three of the International Tribunal's pending trials will be completed by the end of 2009. The trials of the two most recently arrived Accused are estimated to finish in early 2010, and slippage in the *Prlić et. al.* multi-accused case currently indicates that that trial may also run into 2010. However, all efforts are being made to complete all trials as quickly and efficiently as possible, and all appeals are still presently estimated to be concluded during 2011. This estimate is nonetheless subject to a number of factors that can impinge on the expeditious completion of trials and appeals such as illness of the accused or Counsel, as well as failure of witnesses to appear and other similar unforeseen circumstances.

3. The three Trial Chambers of the International Tribunal continued throughout the reporting period to operate at record capacity, hearing eight trials simultaneously with two separate sittings in each of the International Tribunal's three courtrooms from early morning into the evening. Both the seventh and eighth trial take advantage of the inevitable gaps in the scheduling of the six other cases due to a number of factors that cause unforeseen delays in trials, including those identified above. To expedite the conduct of trials, one of the Trial Chambers hearing a multi-accused case will hold additional hearings during the three-week summer recess period so as to make use of the extended availability of the International Tribunal's courtrooms during that period. Unfortunately, court maintenance needs will prevent other Chambers from similar opportunities during the summer recess.

4. The following eight cases are currently in the trial phase: *Prosecutor v. Prlić, Stojić, Praljak, Petković, Ćorić and Pušić; Prosecutor v. Milutinović, Šainović, Ojdanić, Pavković, Lazarević and Lukić; Prosecutor v. Popović, Beara, Nikolić, Borovčanin, Miletić, Gvero and Pandurević; Prosecutor v. Delić; Prosecutor v. Boškoski and Tarčulovski; Prosecutor v. Šešelj; Prosecutor v. Gotovina, Ivan Čermak, and Mladen Markač; Prosecutor v. Jovica Stanišić and Franko Simatović.*

[1] The present report should be read in conjunction with the previous eight reports submitted pursuant to Security Council resolution 1534(2004): S/2004/420 of 24 May 2004; S/2004/897 of 23 November 2004; S/2005/343 of 25 May 2005; S/2005/781 of 14 December 2005; S/2006/353 of 31 May 2006; S/2006/898 of 16 November 2006; S/2007/283 of 16 May 2007 and S/2007/663 of 12 November 2007.

5. There were also a number of contempt cases heard by the Chambers in the reporting period and indictments confirmed in relation to other alleged contempt cases. Many of these contempt cases arose out of the *Haradinaj et al.* case.

6. During this period, Trial Chamber Judges also managed seven cases in the pre-trial stage, leading to the issuance of 104 written decisions and seven oral decisions on such matters as the form of the indictment, challenges to jurisdiction, disclosure of evidence, protective measures for victims and witnesses, provisional release, adjudicated facts and the admissibility of witness statements under Rule 92*bis* of the Rules of Procedure and Evidence ("Rules").

7. The Appeals Chamber continued to show its productivity in relation to both the International Tribunal and the International Tribunal for Rwanda ("ICTR"). It rendered 19 interlocutory appeal decisions and 12 other decisions since the last report.[2] It further delivered Judgement in four appeals, leaving a total of only seven appeals currently pending.[3] The Appeals Chamber anticipates rendering Judgement in two appeals before the summer recess and two others shortly thereafter. Two appeals currently pending should be rendered towards the end of the year and the last appeal recently filed in the *Haradinaj et al.* case will follow shortly thereafter.

8. Currently, only six Accused in five cases await the commencement of their trial before the International Tribunal. This includes four additional Accused in three new cases. Two of these new cases result from the arrests of the fugitives Tolimir and Đorđević. Both of these fugitives had been indicted in multi-accused cases, which commenced over eighteen months ago. As I previously advised the Council, had these fugitives been arrested at an earlier time, they could have been tried together with their co-Accused. Unfortunately, their late arrest means that their fair trial rights can only be accommodated in separate trials. Of the four Accused awaiting trial, one is currently on provisional release until his trial can commence (Momčilo Perišić).[4]

9. As mentioned in the last three reports to the Council, the International Tribunal continues to seek additional avenues for the transfer of convicted persons from the United Nations Detention Unit ("UNDU") to States for the enforcement of their sentence. An agreement on enforcement of sentences was signed with Estonia on 14 March 2008 and another with Slovakia on 7 April 2008. This brings the number of States which have signed enforcement agreements to 15.

II. Measures Taken to Implement the Completion Strategy

A. Trial and Appeal Proceedings

10. The last eight reports to the Security Council identified various concrete measures adopted by the International Tribunal to ensure the timely implementation of the Completion Strategy. Most of the measures adopted under my Presidency stemmed from a thorough examination of trial and appeal practices carried out by the Working Groups on Speeding up Appeals and Trials. Both Working Groups were reconstituted in April 2008, not only to confirm the success of the measures adopted, but also to examine whether further improvements could be made to the efficient conduct of trials and appeals. To illustrate the impact of these concrete measures, a synopsis of their application to trials and appeals currently pending completion before the International Tribunal is provided below. Additionally, those matters out of the control of the International Tribunal which have delayed the efficient conduct of proceedings are detailed in the cases in which such issues have arisen.

11. The trial of *Dragomir Milošević* for crimes committed in Bosnia and Herzegovina in 1994 and 1995 commenced on 10 January 2007, and closing arguments were heard on 9 and 10 October 2007. Prior to the commencement of trial, the Trial Chamber issued a decision reducing the Indictment by one-third pursuant to Rule 73*bis* of the Rules. During the case, several witnesses testified pursuant to Rule 92*bis* and 92*ter*. During the Prosecution case, the Trial Chamber took judicial notice of documents pursuant to Rule 94(B). In addition, both parties requested the Chamber to take judicial notice of adjudicated facts, and these requests were granted. The Judgement was delivered on 12 December 2007.

[2] *See* Enclosures VI and VIII.
[3] *See* Enclosure VII.
[4] *See* Enclosure IV.

12. Trial proceedings in the case of *Prosecutor v. Haradinaj, Balaj and Brahimaj* were completed on 5 March 2008, after an estimated trial length of twelve months. The Prosecution finished the presentation of its evidence on 26 November 2007, having used all of its allocated 125 hours. It called a total of 81 *viva voce* witnesses and a further 16 pursuant to Rules 92*bis* and 92*quater*. Approximately half of the *viva voce* witnesses (38) testified pursuant to Rule 92*ter*. During the course of the trial, the Chamber encountered significant difficulties in securing the testimony of a large number of witnesses and issued 18 subpoenas compelling reluctant witnesses to testify. Many witnesses cited fear as a prominent reason for not wishing to appear before the Chamber to give evidence, and the parties agreed that an unstable security situation existed in Kosovo that was particularly unfavourable to witnesses. The case was significantly shortened by the decision of the Defence not to make a Rule 98*bis* submission and not to present any evidence. The Parties filed their final briefs on 14 January 2008, and the Chamber heard closing arguments on 21-23 January 2008. The Judgement was delivered on 3 April 2008, acquitting the Accused Ramush Haradinaj and Idriz Balaj of all counts, while finding the Accused Lahi Brahimaj guilty of cruel treatment and torture as violations of the laws or customs of war.

13. In the case of *Prosecutor v. Gotovina, Čermak and Markač,* measures were taken by the Judges at the pre-trial conference held on 10 March 2008 to reduce the number of *viva voce* witnesses to be called by the Prosecution. The Pre-Trial Judge ordered that no more than 112 be called. Additionally, the Prosecution announced that it will be tendering witness statements made pursuant to Rule 92*ter* for all of its *viva voce* witnesses. At the invitation of the Trial Chamber, the Prosecution also reduced the necessary hours for presentation of its case from 550 to 209.5. The Prosecution has also indicated that it will seek the admission of testimony of 12 witnesses pursuant to Rule 92*bis*. The trial commenced on 11 March 2008 with the Prosecution's opening statement, followed the next day by the Gotovina Defence's opening statement, which it opted to present at the start of the proceedings. Trial proceedings are estimated to take 18 months to complete.

14. The trial in the case of *Prosecutor v. Rasim Delić* commenced on 9 July 2007, and it is expected that the Judgement will be rendered within 12 months. The Trial Chamber allowed the Prosecution to place 73 witnesses on its witness list and granted 109 hours for the presentation of its case. When the Prosecution rested its case on 10 February 2008, it had used all 109 hours and called 64 witnesses, 52 of whom testified *viva voce*. While the Prosecution had initially planned to complete its case before the winter recess, the unavailability of one witness whose evidence the Chamber eventually heard pursuant to Rule 4 in Sarajevo caused some delay. On 10 October 2007, the Chamber granted a request by the Defence, on health grounds, to sit for four instead of five days a week for the remainder of the trial. On 26 February 2008, the Chamber rendered a Decision denying a Judgement for acquittal pursuant to Rule 98*bis*. On the same day, the Chamber reduced the number of hours available for the presentation of the Defence case from the requested 63.5 hours to 55 hours. The Defence case commenced one week after the Rule 98*bis* Decision was rendered. According to current projections, the Defence will complete its case in May 2008. Depending on further developments in the case, it can be expected that the Judgement will be delivered before the summer recess or shortly thereafter.

15. In the case of the *Prosecutor v. Jovica Stanišić and Franko Simatović*, the two Accused are charged with four counts of crimes against humanity and one count of war crimes. The Pre-Trial Judge handed down a decision reducing the indictment by one-third in early February 2008. The pre-trial conference was initially scheduled to take place on 27 February 2008, to be followed shortly thereafter by the commencement of trial. However, due to the medical situation of the Accused Jovica Stanišić, the pre-trial conference and the commencement of the case have been postponed several times. On 10 March 2008, the Trial Chamber found that the Accused was fit to stand trial, but since that day the commencement of the case has had to be postponed for medical reasons supported by a certificate from the Medical Officer of the UNDU. On 9 April 2008, the Trial Chamber decided to proceed with the case, while allowing Jovica Stanišić to follow the proceedings from the UNDU by way of video-conference link. The Prosecution requested that the evidence of the majority of its witnesses be heard pursuant to Rules 92*bis* and 92*ter*. It also requested judicial notice of approximately 500 adjudicated facts. Several of these motions are pending.

16. In the multi-accused case of *Milutinović et al.*, the six Accused are charged with five counts of war crimes and crimes against humanity allegedly committed by Serbian forces in 15 municipalities of Kosovo in the period between 1 January to 20 June 1999. The Prosecution case closed within the prescribed time on 1 May 2007. The Trial Chamber restricted the time allowed for the presentation of the Defence case pursuant to Rule 73*ter*, as it had previously done under

Rule 73*bis* with respect to the presentation of the Prosecution case. The Defence case started in August 2007, and the Trial Chamber held sessions during the summer recess between 6 and 17 August 2007. The Defence case is expected to close in late May 2008, and the Judgement should be delivered in the fall.

17. In the case against *Vojislav Šešelj*, the Accused is charged with fourteen counts of crimes against humanity and violations of the laws or customs of war allegedly committed in the territory of Croatia, in large parts of Bosnia and Herzegovina and in Vojvodina (Serbia), from August 1991 until September 1993. The first Prosecution witness was heard on 11 December 2007. Of the 100 witnesses scheduled by the Prosecution, the Trial Chamber has heard 14 witnesses so far. The Prosecution has used approximately 35 hours of the 120 hours granted by the Trial Chamber. While the presentation of evidence was scheduled to last one year, a number of important and unforeseen delays have occurred since the commencement of trial, including a motion for disqualification of one of the Judges, a number of contempt motions filed by both parties, and finally, the difficulties experienced by the Prosecution in getting witnesses to testify, as shown by the number of subpoenas issued by the Trial Chamber. In order to expedite the proceedings, the Trial Chamber has decided to make use of Rule 92*ter* evidence for at least 13 witnesses, despite the constant refusal of the Accused to accept this process and to cross-examine any witness whose testimony was presented under Rule 92*ter*.

18. In the multi-accused case of *Prosecutor v. Prlić et al.*, the six Accused are charged with 26 counts of war crimes and crimes against humanity related to approximately 70 crime sites allegedly committed by Bosnian Croats against Bosnian Muslims in Bosnia and Herzegovina between the period of 18 November 1991 to about April 1994. The trial opened on 26 April 2006, with an estimated trial time of no more than three years. The Prosecution completed the presentation of its evidence after 21 months of trial, on 24 January 2008, using 297 hours of court time for direct and re-examination of its witnesses. Oral arguments under Rule 98*bis* were heard between 28 January and 6 February 2008, and the decision denying a Judgement for acquittal was issued on 20 February 2008. The six Defence teams presented their lists of witnesses and exhibits pursuant to Rule 65*ter*(G) on 31 March 2008. The pre-Defence conference and the start of the Defence case commenced on 21 April and 5 May 2008, respectively. Based on the complexity of the case and the fact that the Defence teams representing each of the six Accused are to present their respective case, it is anticipated at this stage that hearings will continue into 2010. The Trial Chamber is currently considering what measures can be implemented to minimize this currently expected delay.

19. There are seven Accused in the multi-accused case of *Popović et al.* The Indictment contains eight counts, including charges of genocide and crimes against humanity allegedly committed at 20 different crime sites. The original estimate for the length of the trial was 29 months, and the Trial Chamber has continued to issue orders which have had the effect of expediting proceedings. For instance, the Trial Chamber issued on 29 November 2007 an Order scheduling, *inter alia*, the close of the Prosecution case-in-chief for 1 February 2008 and the hearing of oral submissions pursuant to Rule 98*bis* from 14 February 2008. Owing to the unusual amount of time required for the testimony of one of the Prosecution witnesses, the Prosecution case was completed on 7 February 2008, slightly later than anticipated. However, the hearing of oral submissions pursuant to Rule 98*bis* began as scheduled on 14 February 2008. During the Prosecution phase, there were 142 *viva voce* witnesses, whose average length of examination-in-chief was 1.70 hours. Of these, ten were 92*bis* witnesses with an average length of examination-in-chief of 0.79 hours and 38 were 92*ter* witnesses with an average length of examination-in-chief of 0.66 hours. It is evident that the use of Rules 92*bis* and 92*ter* proved to be a useful means of expediting the proceedings.

20. The trial in the case of *Prosecutor v. Ljube Boškoski and Johan Tarčulovski* commenced as planned on 16 April 2007. The Prosecution was initially expected to call 98 witnesses. With significant encouragement from the Chamber, 42 witnesses were eventually removed from the Prosecution witness list. The evidence of some 30 of the remaining 56 witnesses was received in full or in part in the form of written statements. As a result of these measures, the Prosecution case was completed in December 2007, eight months after the start of the trial. The Chamber allowed three sitting weeks in January 2008 for the preparation of the Defence cases of the two Accused. Thanks to the proactive approach of the Chamber, which took a firm view regarding relevance, both Defence cases were concluded in less than two months in March 2008. Final trial briefs were filed on 24 April 2008. Closing arguments took place on 6, 7, and 8 May 2008. The Judgement is expected to be delivered by July 2008.

21. In the case against *Mićo Stanišić*, the pre-trial phase is almost complete. The Prosecution and Defence Pre-Trial Briefs were filed early in 2007. There are some outstanding motions, including motions pursuant to Rules 92*bis*, 92*ter* and 92*quater*, and a motion seeking an amendment of the Indictment.

22. Proceedings have also started in the cases of the two Accused arrested last year. In June 2007, *Zdravko Tolimir* was transferred to the seat of the International Tribunal. In August 2007, he elected to conduct his own defence. Two legal advisers and a case manager have now been assigned to his Defence team. On 14 December 2007 the Trial Chamber issued a Decision on all of the preliminary motions filed pursuant to Rule 72. From the beginning of his case, Tolimir has refused to accept documents unless they are written in "Serbian and the Cyrillic script". On 28 March 2008, the Appeals Chamber dismissed the Accused's appeal against the Pre-Trial Judge's oral decision that denied his request for the service of documents in Serbian and the Cyrillic script. Despite this Decision, the Accused continues to refuse to accept filings in Serbian and the Latin script.

23. In the *Đorđević* case, the Accused made his initial appearance on 19 June 2007. His case is proceeding in the pre-trial phase, and at this point, it is anticipated that the case will be trial ready in the early fall of 2008, barring any unforeseen difficulties. One challenging issue which could potentially impact the readiness date for this pre-trial case is that the Accused was originally one of the co-Accused in the *Milutinović et al.* case currently underway. The Prosecution has now indicated that it plans to file a request to amend the indictment in the *Đorđević* case but it is possible that the outcome of the *Milutinović et al.* case could further impact the substance of the indictment in the *Đorđević* case. Since the Judgement in *Milutinović et al.* may not be issued until the point at which *Đorđević* is trial ready, this could result in last minute or late modifications to the *Đorđević* indictment.

24. In addition to the cases outlined in the above paragraphs, Trial Chambers also heard a number of contempt cases. The indictment against Ljube Krstevski, charging him with one count of contempt of the International Tribunal for his failure to comply with a Tribunal order issued in *Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, was confirmed on 30 October 2007, and an arrest warrant was issued on the same day. The Accused was transferred to the seat of the International Tribunal on 28 November 2007. His initial appearance was held the following day. On 6 December 2007, the Chamber granted the Prosecution leave to withdraw the Indictment against the Accused as it was no longer in the interests of justice to continue with the contempt proceedings, and the proceedings were thus concluded. The contempt case against Dragan Jokić is drawing to a close. The contempt proceedings were initiated following Jokić's refusal to testify in the case of *Prosecutor v. Popović et al.* The Trial Chamber decided to prosecute the matter itself and issued an Order in Lieu of Indictment on Contempt on 1 November 2007. To date, two hearings have been held, in which Jokić has led evidence from two witnesses and tendered several exhibits. Trial Chamber I is also currently considering five contempt cases in various stages of pre-indictment investigation or post-indictment, pre-trial processing, three of which arise from the *Haradinaj et al.* case.

25. As far as the Appeals Chamber is concerned, there are currently seven appeals from Judgement pending before the Appeals Chamber following the issuing of the *Hadžihasanović and Kubura* Appeals Judgement in April 2008. Of these six appeals, two are in the Judgement drafting stage, the hearings having been held in April (*Orić* was heard on 1-2 April 2008 and *Strugar* on 23 April 2008). It is currently anticipated that two other appeals, in the *Krajišnik* and *Martić* cases, will be heard in the next month, prior to the judicial recess. Two appeals in the *Mrkšić et al.* and *D. Milošević* cases will likely be heard after the court recess and should be completed by the end of the year. The recently filed appeal in the *Haradinaj et al.* case will be dealt with shortly thereafter.

26. One notable delay, which has affected both the *Mrkšić* and *D. Milošević* appeals proceedings, has resulted from the requests of the respective Defence teams for an extension of time in the briefing schedule to enable the Accused to read their respective trial Judgements in B/C/S. The extent of the resultant delay depends entirely on the resources available in the translation department, which is overburdened and can be expected to remain so for the next few years. Practically speaking, these delays will likely last approximately three-four months each. However, to minimize their impact, the Appeals Chamber has subjected the parties to a compressed briefing schedule upon receipt of the translated Judgement. The International Tribunal is also considering measures to reduce the number of written decisions issued during trial and appeal proceedings so as to ease the current burden on the translation unit.

27. In the first Completion Strategy Report submitted to the Security Council in May of 2004, the Security Council was advised that a total of eight Accused were being tried in six cases and that in the nine years following its establishment, the International Tribunal had completed or was holding first instance proceedings involving 59 Accused in 38 proceedings.[5] There were a total of 33 Accused awaiting trial in 17 cases,[6] appeals had been completed in 20 cases involving 28 Accused,[7] and 20 fugitives were at large. Today, only four years later, only six Accused are in the pre-trial stage,[8] 28 Accused are currently on trial,[9] and trial proceedings against 111 Accused have been completed. Appeals have been completed in 50 cases involving 76 Accused and only four fugitives remain at large.[10] The achievements of the International Tribunal far surpass that of any other international or hybrid court and demonstrate the commitment of the International Tribunal to the expeditious completion of its mandate.

B. *Ad Litem* Judges

28. The *ad litem* Judges continue to make an outstanding contribution to expediting our work. Currently, the International Tribunal has a total of fifteen *ad litem* Judges, three more than permitted under the Statute of the International Tribunal, and I am grateful to the members of the Security Council for resolution 1800 of February 2008, which authorised the assignment of up to four additional *ad litems* for the period up to December 2008. This authorisation allowed the International Tribunal to commence new trials and make maximum use of its permanent Judges. All *ad litems* are fully engaged in the work of the International Tribunal. Of these fifteen, three are serving as full *ad litem* Judges on two trials, while another two are serving as *ad litem* Judges on one trial and as reserve *ad litem* Judges on an additional trial. These Judges attend two court sittings per day, from early morning into the evening. The trial schedule is arranged to maximize sitting time in both cases, and as a result, the breaks accorded to these *ad litem* Judges are few and of short duration.

29. *Ad litem* Judges who have not been assigned to an additional trial are fully engaged in the preparation of new cases for trial. Accordingly, all fifteen *ad litem* Judges have been willing to take on an onerous workload to ensure the expeditious completion of the International Tribunal's mandate and to secure the continued support of the Council and of Member States.

C. Judges and Staff Retention

30. The number of qualified staff leaving the International Tribunal for more secure employment with other institutions has continued to increase over the reporting period. Departures of experienced staff members are detrimental to the expeditious completion of the International Tribunal's mandate. Unfortunately, in-house incentives aimed at retaining staff such as promotions and compensation time have not been sufficient to offset the lure of experienced staff to other international courts, including more permanent courts. The International Tribunal needs additional support from the Security Council and Member States in developing other incentives to retain its best staff until the work of the International Tribunal is completed.

31. Also of critical importance at this juncture is a positive resolution of the legal entitlement of the Judges to receive a pension in full parity with Judges of the International Court of Justice in accordance with the Statute of the International Tribunal, as was recommended in the independent consultant's study commissioned by the Secretary-General. The claim of the Judges to this entitlement has been long outstanding, and the failure to resolve it expeditiously and fairly has been detrimental to the morale of the Judges. Many of the International Tribunal's Judges are currently serving their second term, while a few are in their third term. The efficiency of the International Tribunal's work is premised upon the experience and dedication of all of its Judges, and the retention of these qualified and highly experienced Judges is critical to meeting the aims of the Completion Strategy.

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[5] S/2004/420, para.2.
[6] S/2004/420, Annex 3.
[7] S/2004/420, Annex 4.
[8] *See* Enclosure IV.
[9] *See* Enclosure II.
[10] *See* Enclosure III.

D. Referral of Cases Involving Intermediate and Lower-Ranking Accused to Competent National Jurisdictions

32. The impact of referrals on the overall workload of the International Tribunal has been substantial. Of the 22 motions filed since the adoption of the rule on referrals, the Referral Bench has granted nine motions involving 15 Accused. Of those granted, ten Accused appealed to the Appeals Chamber, and all appeals have been disposed of. The appeal of one Accused, Milan Lukić, was granted by the Appeals Chamber. The other decisions upheld the referrals in the cases of *Stanković, Mejakić et al., Ljubičić, Janković and Kovačević and Trbić*. Currently, ten Accused have been transferred to the War Crimes Section of the State Court of Bosnia and Herzegovina, two Accused have been transferred to the authorities of Croatia, and one Accused has been transferred to Serbia for trial before the domestic courts of these countries.[11]

33. The Prosecution continues to monitor the trials referred to the region through the Organization of Security and Cooperation in Europe ("OSCE"). Under Rule 11*bis*, the Prosecution has the authority to request the Referral Bench to revoke its referral order should it determine that such a case is not being conducted in full adherence with human rights norms and due process standards. The War Crimes Section of the State Court of Bosnia and Herzegovina has completed two cases referred by the International Tribunal, one is at the appeal stage, and three trials are ongoing. On 28 March 2007, proceedings against the first Accused referred, *Stanković*, came to a close with the Appellate Panel of the Court of Bosnia and Herzegovina sentencing him to 20 years' imprisonment. On 25 May 2007, *Stanković* escaped from prison and is currently at large. The International Tribunal remains gravely concerned about the lack of progress on behalf of the relevant authorities in apprehending Stanković and prosecuting those allegedly responsible for assisting the escape. On 16 February 2007, the trial of *Janković* concluded with the Court finding him guilty of crimes against humanity and sentencing him to 34 years' imprisonment. On 23 October 2007, the Court of Bosnia and Herzegovina Appelate Panel upheld the Trial Panel's sentence. The first-instance Judgement in the case of *Rašević* and *Todović* was pronounced on 29 February 2008, finding the Accused guilty of crimes against humanity and sentencing them to 8.5 years' and 12.5 years' imprisonment, respectively. At present there are three trials before the Court of BiH: *Trbić, Ljubičić and Mejakić et al.* The trial in the single case referred by the International Tribunal to Croatia, that of *Ademi and Norac*, commenced on 18 June 2007 and is ongoing. In the *Kovačević* case, the only one referred to Serbia, the Belgrade District Court found on 5 December 2007 that the state of mental health of the Accused temporarily prevented criminal prosecution. The International Tribunal is satisfied that these proceedings are being conducted in full compliance with international norms of due process as recognised by the reports of the OSCE and human rights organizations.

E. Outreach and Capacity-Building

34. Dissemination of information about the court proceedings to audiences in the former Yugoslavia continues to be a priority for the International Tribunal, as its cases and findings must be accessible and understandable to the local communities in order to make a contribution to a lasting peace, as envisaged by the Security Council.

35. Through its Outreach Programme and field offices in Belgrade, Sarajevo, Prishtinë/Priština and Zagreb, the International Tribunal is also able to engage in direct communication with interested groups and individuals across the former Yugoslavia. Its representatives participated in a multitude of grass-roots events, speaking about the International Tribunal's work and distributing information packages tailored to different groups, such as youth organizations and victims' associations. The International Tribunal provided significant assistance to a regional civil society initiative to make the International Tribunal's proceedings widely accessible through permanent documentation centres in order to assist truth-telling and reconciliation processes.

36. Mass media and the internet are two natural channels for reaching out to the populations at large in the territories of the former Yugoslavia. The International Tribunal makes great effort to serve the media in the region by providing statements, documents, and audio video materials, as well as interviews for television and radio in the local languages. The International Tribunal's website continues to attract significant interest with more than one million page hits recorded each month for the English site and close to one million each month for the B/C/S site. The audio video webcast of courtroom

[11] *See* Enclosure V.

proceedings has a large audience, with viewers for some important hearings such as the opening statements in the *Gotovina et al.* case numbering more than 120,000 in a single day.

37. Contribution to the capacity building of national justice systems in the region of the former Yugoslavia is another essential part of the International Tribunal's Completion Strategy. The International Tribunal has established good relationships and channels of communication with the local judiciaries through a number of visits, meetings and seminars. Key institutions in the region have been given electronic access to the International Tribunal's judicial database and jurisprudence. Transfer of expertise is not limited to strictly legal work. Instead, it is also taking place in areas such as support and protection of victims and witnesses or the work of court security officers.

38. In particular, the International Tribunal continued to pursue a close partnership with the State Court of Bosnia and Herzegovina, which is currently trying many locally initiated war crimes cases as well as those referred from the International Tribunal. In March 2008, the ICTY Outreach Programme hosted a visit by seven senior officials of the Court and Prosecutor's Office of Bosnia and Herzegovina, enabling high-level discussions on how to best ensure effective continuation of the International Tribunal's work in combating impunity. In April, the Judges received a visit by twelve colleagues from Sarajevo and exchanged experiences with them in two in-depth roundtable discussions. The visit also included several thematic meetings with various sections of the International Tribunal. Several other visits from the region were also hosted during the reporting period.

39. In order to ensure that the legacy of the International Tribunal is preserved through continued domestic prosecution of war crimes cases, domestic jurisdictions must be supported by the Security Council and the international community in the development of their judicial capacity. While some Member States continue to offer resources and support, it remains equally clear that further assistance is needed if these courts are to successfully continue the work of the International Tribunal in the future. For example, there still remains much work to be done to facilitate cooperation between States of the region in the investigation and prosecution of alleged war criminals, including changes to existing law to allow for extradition between States of the region. There is also a desperate need to ensure adequate detention facilities for remand and convicted accused and that the rights of remand and convicted accused are respected by those responsible for their detention. In that respect, the training of police and prison officers on due process and human rights standards should be prioritized to guarantee that trials and detention of accused and convicted persons satisfy internationally accepted standards. It is important to recall that it was never intended nor was it considered possible for the International Tribunal to try all persons responsible for the atrocities committed during the conflict in the region. The international community must therefore not underestimate the importance of building the capacity of the courts in the States of the former Yugoslavia to carry on the legacy of this International Tribunal long after it has completed its mission.

40. As previously reported to the Council, Rule 75 was amended on 12 July 2007 to allow direct petitioning by judicial authorities or duly authorized parties in other jurisdictions for access to protected material. This amendment was particularly aimed at improving judicial cooperation between the International Tribunal and domestic courts in the region of the former Yugoslavia. Since the amendment was introduced, the International Tribunal has received a large and increasing number of applications pursuant to Rule 75 from such domestic courts, and the International Tribunal has sought to streamline its procedures to ensure an efficient handling of such applications. I have, for instance, appointed a specific bench to consider applications for access to confidential material in cases that have already been finalized. The Working Group on Access to Confidential Materials is also currently exploring ways to promote efficiency in this process.

F. Cooperation of States with the International Tribunal

41. A lack of full support from the international community for the work of the International Tribunal is evident in the continuing failure of the international community to secure the arrest and transfer of the four high-level remaining fugitives: Karadžić, Mladić, Župljanin, and Hadžić. The inability to bring these fugitives to international justice signals a failing commitment on the part of the international community to the principle that there should be no impunity for international crimes. Without the arrest and trial of these remaining fugitives, the International Tribunal's key objective to bring justice, peace and reconciliation to the region of the former Yugoslavia will be seriously undermined. The International Tribunal must not close its doors until these fugitives are arrested and tried. I once again ask all States to co-operate in full adherence with their obligation to do so under Article 29 of the Statute of the International Tribunal, and

I urge the Security Council to make clear that the trial of these fugitives by the international community does not hinge upon the International Tribunal's proposed Completion Strategy dates.

42. The Security Council wisely established the International Tribunal as an autonomous judicial body. The Prosecutor and the Judges, within their respective competences, do not act upon instructions from governments or other entities. Thus, the International Tribunal carries out its mandate within the limits decided by the Security Council, but, at the same time, in full independence. The Judges, appointed by the General Assembly, act impartially and must decide according to the presumption of innocence, as required by the Statute adopted by the Security Council and in accordance with international legal standards. When there are errors of law and/or fact, the Appeals Chamber strives to correct them within the limits of its power of review. This, however, does not take away from the fact that, in order to be fully effective, the International Tribunal has to rely to various degrees on the cooperation of governments and other entities. In addition to the lack of cooperation in arresting fugitives, the International Tribunal was also faced with refusals by governments to provide access to evidence despite good faith efforts by its organs. In this regard, I would like to emphasise that, while the International Tribunal has been at times criticized for not delivering the verdicts that some governments or other entities expected, Judges will continue to assess evenly the evidence presented before them – and only that evidence – and to make findings on guilt only if the evidence establishes individual criminal responsibility beyond a reasonable doubt.

III. Legacy of the International Tribunal and Residual Mechanisms

43. For over two and a half years now, the International Tribunal has focused attention on its legacy and most crucially on mechanisms that will have to remain in place to dispose of residual issues once the International Tribunal completes all trials and appeals on its docket. In April 2007, the International Tribunal, in collaboration with the ICTR, submitted a second report on legacy issues to the Office of the Legal Advisor in New York for Member State consideration, which followed an earlier report submitted in December 2006. This second report resulted in a meeting of the Presidents, Registrars and Prosecutors from both Tribunals with the Security Council Working Group on the *ad hoc* Tribunals in June 2007. At that meeting, the Legacy Report of the Tribunals was debated. Following that meeting, the Tribunals, taking on board the comments of Member States, submitted a final report to the Office of the Legal Advisor in September 2007. Since the submission of that final report, both Tribunals have met with the Working Group and have responded in writing on numerous occasions to questions and clarifications of the Working Group.

44. Additionally, the International Tribunal has been working to ensure its legacy and provide a blueprint for future international courts and for the transfer of war crimes cases to domestic jurisdictions through the compilation of its best practices. With the assistance of the UN Interregional Crime and Justice Research Institute (UNICRI) as facilitators, publishers and disseminators, the International Tribunal is in the process of preparing a manual in order to identify the challenges that Judges, Prosecutors and Defence Counsel face in the conduct of war crimes cases. Also, with the assistance of the OSCE, the International Tribunal is assessing its current outreach activities and training programs with a view to identifying best practices and what remains to be achieved to guarantee its lasting impact on the work of domestic courts in the region of the former Yugoslavia. These new initiatives will ensure that the legacy of the International Tribunal's work will be secured not only through proceedings carried out by domestic courts in the region but world-wide by the courts and in the jurisprudence of all Member States.

IV. Updated Prognosis Regarding Implementation of the Completion Strategy

45. The International Tribunal has continued its commitment to make all efforts to meet Completion Strategy deadlines, as demonstrated by this report. Unfortunately, factors outside the control of the International Tribunal have resulted in slippages in previously estimated completion dates. In those cases tried during the reporting period, delays have been caused by the illness of Accused and the failure of witnesses to cooperate. Further, the completion of the International Tribunal's mandate continues to be hindered by the failure of States to ensure the arrest of outstanding fugitives. Late arrests, such as those that recently occurred with the fugitives Tolimir and Đorđević, while better than a failure to arrest, do impact upon Completion Strategy targets. Similar delays must be expected with respect to the four remaining fugitives. That said, due to the steadfast dedication and commitment of the Judges and staff of the International Tribunal, the International Tribunal has succeeded in arriving at a clear estimation for the completion of all of its pending trials in early 2010, as shown by the chart of scheduled trials attached in Enclosure IX. Furthermore, the International Tribunal estimates

that all appeals should be concluded within 2011. However, I must underscore that these dates are projections only and that the International Tribunal is committed to identifying new measures which will assist the further efficient conduct of its trials in compliance with due process and fair trial rights of the accused. Towards that end, both the Working Groups on Speeding up Trials and on Speeding up Appeals have been reconstituted, and it is anticipated that the next Completion Strategy report will provide a summary and analysis of their findings. However, I must impress upon the Security Council that the continued success of the International Tribunal rests upon its ability to retain its highly qualified and experienced Judges and staff. The conditions and services of Judges of the International Tribunal must be respected, and the Council must show support for schemes aimed at the retention of necessary staff members.

V. Conclusion

46. Together with the ICTR, the International Tribunal is the only universal international tribunal established with the support of the entire international community and dependent upon its continued support for the completion of its mandate. The essence of the International Tribunal's success is the invaluable precedent it has set for the enforcement of international humanitarian law and the contribution it has made to the establishment of peace and stability in the former Yugoslavia. The International Tribunal is a judicial institution charged with rendering justice impartially and in accordance with the rule of law. It cannot and does not bow to political pressure, nor will it sacrifice due process and international standards of fair trial to please all members of the international community. For the International Tribunal to be held as an enduring success in the implementation of international criminal justice, it must stand by principle, strictly abide by standards of due process and not be swayed by political pressures. Furthermore, the International Tribunal stands out as the most efficient of all existing international courts and as such deserves a high degree of respect and support from the international community. This report to the Security Council demonstrates yet again the International Tribunal's steadfast commitment to achieving greater efficiency in its work without sacrificing due process. It also amply demonstrates that the International Tribunal has continued to be more efficient and productive than any other existing international jurisdiction.

Annex II

[Original: English and French]

Report of Serge Brammertz, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, provided to the Security Council pursuant to paragraph 6 of Security Council resolution 1534 (2004)

1. Introduction

1. This is the ninth report submitted by the Prosecutor pursuant to Security Council resolution 1534 (2004) of 26 March 2004.

2. During the past six months, the Office of the Prosecutor made progress towards achieving the Completion Strategy goals. However, during this period, there were no arrests and four accused, Ratko Mladić, Radovan Karadžić, Stojan Župljanin and Goran Hadžić, are still at large. Their arrests remain a crucial challenge to the International Tribunal and the international community. Without the critical support of States, and in particular from the former Yugoslavia, these fugitives will not be brought to justice.

3. During this reporting period, the Office of the Prosecutor continued to focus on four priorities: (1) the completion of trials and appeals; (2) international cooperation; (3) the transfer of cases and investigative material to national authorities and capacity building activities; and (4) structure and organisational management.

2. The completion of trial and appeals proceedings

4. The Office of the Prosecutor remains strongly committed to its core activity of completing the remaining trials and appeals in accordance with the Tribunal's Completion Strategy. Effectively meeting this goal requires the presentation of evidence in an efficient manner, recognising both the rights of the victims to have a representative number of the crimes brought to trial and the rights of the accused to a fair trial. The Prosecution has taken steps in the ongoing and upcoming trials to achieve this and to reduce the time necessary to present its cases.

5. The Office of the Prosecutor is presently prosecuting 28 persons in eight trials and is examining means for the efficient prosecution of the remaining six accused and four fugitives. The *Ramush Haradinaj et al.* trial was completed with the judgement rendered on 3 April 2008. Two cases have concluded and are awaiting judgement (*Ljube Boškoski & Johan Tarčulovski* and *Rasim Delić*). The ongoing trials are essentially on schedule. The Prosecution's evidence has been completed in the Tribunal's three multi-accused leadership trials (*Vujadin Popović et al.*, *Jadranko Prlić et al.* and *Milan Milutinović et al.)* and the cases are in the defence phase. The trials of *Vojislav Šešelj* and *Ante Gotovina et al.* have begun. While the health of Jovica Stanišić delayed the beginning of his trial and that of his co-Accused, the Prosecution has presented its first witnesses.

6. Two more trials, *Momčilo Perišić* and *Mićo Stanišić*, are scheduled to begin in July 2008. Two of the three remaining cases (*Milan Lukić and Sreten Lukić*, *Vlastimir Đorđević* and *Zdravko Tolimir*) involve accused who were arrested too late to be tried together with their co-accused in the multi-accused trials. Two of these accused (Vlastimir Đorđević and Zdravko Tolimir) each now require stand-alone trials. This fact illustrates the point often made by ICTY Prosecutors that the early apprehension of fugitives is critical for the Tribunal's Completion Strategy.

7. In advance of upcoming trials, the Prosecution has made a number of proposals designed to expedite proceedings without diminishing the Prosecution's case proving the essential nature and scope of each accused's responsibility.

8. These proposals, if accepted by the Chamber, reduce the Prosecution's case and shorten the length of the trial. First, the Prosecution has taken steps to reduce the scope of its case. For example, by reducing the number of witnesses it

intends to call, the Prosecution has shortened one case (*Milan Lukić and Sreten Lukić*) by at least one-third of its estimated time. In another case (*Mićo Stanišić*) the Prosecution has proposed removing 37 of the crime sites and incidents alleged in its indictment.

9. Second, the Prosecution has also put forward proposals to reduce the length of time needed to present its evidence in court. It has proposed that Trial Chambers accept the findings already made by other Chambers in proceedings before the Tribunal as permitted under Rule 94, instead of having to rehear the same evidence. In one case (*Mićo Stanišić*), this would eliminate the need to hear at least 20 witnesses. In another case (*Momčilo Perišić*), a similar proposal before the Chamber would result in a reduction of 46 witnesses, while the evidence of another 11 would be shortened.

10. The Prosecution has made alternative proposals to reduce the number of witnesses that need to testify in court by relying on written statements of their evidence, as permitted under Rules 92*bis* and 92*ter*. The President's Report highlights the importance of using such procedures. Though this often results in additional preparatory work for the Prosecution, utilising such procedures reduces valuable court time. In one case (*Jovica Stanišić and Franko Simatović*), the Prosecution has requested that the evidence of a majority of its witnesses be heard in written form and only essential evidence be presented live in court. In a second case (*Mićo Stanišić*) the Prosecution has proposed that the evidence of 64 witnesses be received entirely in written form. The Prosecution has also proposed that the written statements of 24 witnesses replace their testimony for the Prosecution so that these witnesses only appear in court to be questioned by the defence and the judges. In a third case, the Prosecution has proposed that the evidence of 44 witnesses be presented in written form only and that the statements of another 85 witnesses replace their testimony for the Prosecution, so that these witnesses only appear in court to be questioned by the defence and the judges (*Momčilo Perišić*).

11. Prosecuting complex trials where the accused are unrepresented (*Vojislav Šešelj, Mićo Stanišić, Zdravko Tolimir*) creates additional challenges. In the reporting period, the Prosecution has had to redirect significant resources to ensure effective conduct of trials consistent with the goals of the Completion Strategy. For example, in the *Vojislav Šešelj* trial, qualified Prosecution staff have had to transcribe or translate evidence from former cases into the Serbian language and to make paper copies of documents for the accused, who refuses to take advantage of the facilities available to him to receive and review evidence and documents electronically.

12. Since the Prosecutor's last report there has been a disturbing increase in the number of incidents involving interference with the Tribunal's administration of justice, either by persons interfering with prosecution witnesses or by journalists publishing confidential information. This conduct directly affects the Prosecution's ability to present its case in an effective and timely manner. The Prosecutor regards these incidents seriously. Witness protection is a paramount concern because witness cooperation is often fragile and the loss of cooperation by key witnesses can be extremely damaging to the Prosecution's case against the accused. The Prosecutor's efforts to protect its witnesses are important but not visible. Several investigations have been conducted and have resulted in indictments charging individuals with contempt of the Tribunal, an offence which attracts a maximum penalty of seven years imprisonment. The Prosecutor encourages the Council, and indeed all States, to assist the International Tribunal in protecting its ability to carry out its mandate.

13. In relation to appeals before the Appeals Chamber, the Prosecution work has been constant. The Appeals Chamber rendered a judgement in the *Enver Hadžihasanović & Amir Kubura* case and the Prosecution filed appeals in two cases: *Dragomir Milošević* and *Ramush Haradinaj et al.*

14. In relation to ongoing appeals, the Prosecution consistently met all filing deadlines, ensuring that no delay was caused. Filings were completed in the *Momčilo Krajišnik* and *Milan Martić* cases and the Prosecution is prepared to proceed once the oral hearing is scheduled. In the *Mile Mrškić and Veselin Šljivančanin* case, all Prosecution appeal filings have been completed, though there is a delay in relation to the defence appeal as the judgement has yet to be translated into a language the accused understands. The Prosecution presented its final arguments in the *Naser Orić* and *Pavle Strugar* appeal cases, which are now awaiting judgement from the Chamber.

15. The Prosecution assigned staff from the Appeals Section of the Office to assist, when necessary, on appeals which arise during the middle of a trial. By managing resources, such appeals could be dealt with by the Office in timely manner, thereby contributing to efficient trial proceedings.

16. It is expected that over the next six months, appeals practice will increase significantly. Trial Judgements are expected in two completed trials – *Ljube Boškoski & Johan Tarčulovski*, *Rasim Delić* and the first multiple-accused case - *Milutinović et al.* - which will finish in July. The Prosecution filings for any appeals from these Judgements will be prepared over the next two reporting periods. The filings in the *Mile Mrškić and Veselin Šljivančanin*, *Dragomir Milošević*, *Ramush Haradinaj et al.* cases should be completed before the end of the year. The *Momčilo Krajišnik*, *Mile Martić*, and *Mile Mrškić and Veselin Šljivančanin* cases should be heard and together with the *Naser Orić* and *Pavle Strugar* cases decided in the next reporting period. Recognising the increase in cases in this area, the Prosecution has established a staffing plan which allocates resources to meet the increased workload.

3. International cooperation

17. In order to fulfil its mandate, during the reporting period the Office of the Prosecutor continued to seek the full cooperation of States in the former Yugoslavia and other States, as required under Article 29 of the Statute of the Tribunal.

3.1. Cooperation from States of the former Yugoslavia

18. Cooperation from States of the former Yugoslavia remains vital in several areas: the access to archives and the provision of documents, access to and protection of witnesses, and the search for and the arrest and transfer of the remaining four fugitives, including taking the necessary measures against those who continue to support them.

3.1.1. Cooperation of Serbia

19. During the reporting period, the ICTY Prosecutor travelled to Belgrade where he met with the Serbian President, the Prime Minister, members of Government, members of the judiciary as well as representatives of law enforcement agencies in charge of cooperation with the International Tribunal. Although several interlocutors expressed their commitment to full cooperation with the Office of the Prosecutor, including the arrest and transfer of the remaining fugitives, limited concrete results have been produced in the reporting period.

20. In terms of access to archives and the provision of documents during the reporting period, Serbia's cooperation was partially satisfactory. In the area of the search for fugitives, cooperation remains unsatisfactory.

21. The Office of the Prosecutor has received adequate responses to a number of requests for assistance. However, significant obstacles remain in relation to access to some key archives and documents for ongoing trials or those that are about to begin in the very near future. Recently, following a number of failed attempts to obtain key documents and access to military archives, the Office of the Prosecutor requested the Court to issue a binding order to Serbia to meet these obligations.

22. The Office of the Prosecutor also continues to request access to a select and crucial part of the archives of Serbia's civilian intelligence agency (BIA). Despite previous arrangements to allow supervised direct access for staff members of the Office of the Prosecutor, no access to these archives has been granted. Moreover, significant numbers of requested documents have not been provided notwithstanding specific formal requests. The refusal to provide access to the BIA archives as well as the delay in providing documents, seriously affects the work of the Office. These documents are critical for the upcoming case against Jovica Stanišić, the former chief of the civilian intelligence agency and Franko Simatović a commander of an operations unit of this agency.

23. In relation to access to witnesses, the Serbian Office of the War Crimes Prosecutor has, on several occasions, facilitated the appearance of important witnesses. The War Crimes Prosecutor also provided the ICTY Office of the Prosecutor evidentiary material from ongoing trials before the War Crimes Chambers in Belgrade.

24. Despite some actions taken by the Serbian police to protect ICTY witnesses who had received threats, protection of witnesses in Serbia and the growing failure of witnesses to appear to testify on a voluntary basis, particularly in the case against Vojislav Šešelj, remains a grave concern to the Office of the Prosecutor. Due to the serious questions about the safety of witnesses in Serbia, the Office of the Prosecutor, together with the Registry's Victims and Witnesses Section, will continue to pursue, closer cooperation with the Serbian authorities to resolve these questions.

25. The most critical area of cooperation remains the apprehension of fugitives. The Office strongly believes that the remaining accused, namely, Ratko Mladić, Radovan Karadžić, Stojan Župljanin and Goran Hadžić, are within reach of the authorities in Serbia and that Serbia can locate and arrest them. In this area, cooperation remains unsatisfactory.

26. Efforts to apprehend the fugitives include working with the various principal Serbian agencies in charge of tracking fugitives (the Action Team). During the reporting period, the pace of work of the Action Team has slowed and coordination between the principal security agencies has been far from efficient. Lack of a clear concerted strategy and systematic investigative activities directed at locating and arresting fugitives continue to impact negatively on tracking efforts. Serbian officials acknowledged that the Action Team has been working with diminished capacity due to the unstable political situation in Serbia and related uncertainties. The Office of the Prosecutor will maintain its regular contact with the Action Team in the hope of achieving more positive results in the coming months.

27. The only notable step in tracking fugitives was the action taken by the Serbian War Crimes Prosecutor in the town of Niš in an operation aimed at apprehending Stojan Župljanin. Using recently amended domestic legislation, the Serbian War Crimes Prosecutor has also opened preliminary investigative proceedings in this specific case and continues to coordinate and supervise operational activities of the relevant services. Serbian authorities are encouraged to use this legislation against the support networks and ensure that additional legislation on the freezing of assets of fugitives is adopted.

3.1.2 Cooperation of Bosnia and Herzegovina

28. During the reporting period, the Prosecutor travelled to Sarajevo to meet with members of the Presidency, several members of Government at the State and entity levels, members of the international community and victim representatives, to discuss cooperation and important aspects related to the work of the Office of the Prosecutor.

29. The level of cooperation provided by Bosnia and Herzegovina remains generally satisfactory.

30. The authorities of Bosnia and Herzegovina have granted access to Government archives and provided documents requested. Moreover, the authorities continued to provide adequate responses to requests for assistance and facilitate the appearance of witnesses before the Tribunal.

31. Law enforcement and judicial authorities of Bosnia and Herzegovina are requested to take more pro-active steps against those engaged in helping the fugitives evade justice or otherwise obstructing the Tribunal's effective implementation of its mandate.

3.1.3. Cooperation of Croatia

32. During the reporting period, the Prosecutor travelled to Croatia to meet with the Prime Minister of Croatia, Members of Government and the State Prosecutor to discuss cooperation with the Office of the Prosecutor.

33. During the reporting period, Croatia's level of cooperation with the Office of the Prosecutor has been partially satisfactory.

34. The Office of the Prosecutor requested Croatia to grant access to Government archives and produce documents in the *Jadranko Prlić et al.* and *Ante Gotovina et al.* cases, the two cases for which Croatia's cooperation is required. Although certain archival materials were made available, a number of requests for key documents are still pending. As these trials are in progress, it is crucial that the requested documents be made available immediately. In the *Ante Gotovina et al.* case, the Office of the Prosecutor is considering requesting that the Court order Croatia to meet its obligations.

3.1.4. Cooperation of the Former Yugoslav Republic of Macedonia

35. During the reporting period, the Office of the Prosecutor requested the assistance of the former Yugoslav Republic of Macedonia in relation to the *Ljube Boškoski and Johan Tarčulovski* trial. Despite some initial difficulties in gaining access to witnesses the level of cooperation with the Tribunal has been generally satisfactory.

3.1.5. Cooperation of Montenegro

36. During the reporting period, the Office of the Prosecutor continued to seek cooperation from Montenegro to take the necessary action against the networks supporting the fugitives. The level of cooperation provided by Montenegro has been generally satisfactory. The Office of the Prosecutor encourages Montenegro to continue taking all necessary measures against those supporting the fugitives.

3.2. Cooperation from other States and organisations

37. The Office of the Prosecutor continued to seek the assistance from States to support its work by providing documents and information necessary for the preparation of its trials and appeals. The Office of the Prosecutor also continued to be actively engaged in seeking the support of States and international organisations to obtain the arrest of remaining fugitives. It is important that the international community continue to insist on their arrest.

38. As previously reported, the Office of the Prosecutor encountered serious problems related to the protection of witnesses. The Office of the Prosecutor relies heavily on the international community's assistance in ensuring the safety of its witnesses.

39. The Office of the Prosecutor appreciates the support provided by international and regional organisations such as the EU, the OSCE, the Council of Europe and non-governmental organisations, including those active in the former Yugoslavia. Their support will continue to be crucial during the next reporting period as the work of the Tribunal progresses.

4. The transfer of cases and investigative material to national authorities and capacity building activities

40. The transfer of investigative case files and material to competent national jurisdictions continues to be a key component of the Tribunal's Completion Strategy together with facilitating access to material and databases in The Hague.

4.1. Rule 11*bis* cases

41. By June 2007, all pending Rule 11*bis* cases had been transferred to Bosnia and Herzegovina (6 cases), Croatia (1 case) and Serbia (1 case).

42. The Office of the Prosecutor has worked closely with authorities in Bosnia and Herzegovina, Croatia and Serbia on transferred cases. In Bosnia and Herzegovina, these cases have progressed well. One trial with two accused was completed and two other persons were sentenced on the basis of a plea agreement. Two cases were recently completed on appeal. The remaining three cases are underway and it is expected that judgments will be rendered in all cases before the end of 2008. In Croatia, it is expected that the one transferred case will finish by the end of May 2008. In the one case transferred to Serbia, the Presiding Judge dismissed the indictment because the accused was unfit to stand trial. The accused remains under remand in a medical facility for regular evaluation and assessment of his mental state.

43. The trials of these cases continue to be monitored by the Organization for Security and Cooperation in Europe (OSCE) on behalf of the Office of the Prosecutor. The Office of the Prosecutor receives regular monthly reports from the OSCE offices in Bosnia and Herzegovina, Croatia and Serbia. These reports serve as a basis for the Prosecutor's progress reports to the Tribunal's Referral Bench on each case.

4.2. The transfer of investigative material to national authorities

44. The Office of the Prosecutor continues to transfer case files containing investigative material to national prosecuting authorities in the States of the former Yugoslavia. The transfer of these files forms an important part to the Tribunal's Completion Strategy and an important aspect of the Prosecutor's close interaction with national prosecuting authorities.

45. These cases involve lower level perpetrators connected to the higher level leadership cases tried at the Tribunal. The transfer of case files is prepared in consultation and coordination with national prosecution authorities from Bosnia and Herzegovina, Croatia and Serbia. Thus far, the Office of the Prosecutor has sent eight case files to Bosnia and Herzegovina, two case files to Croatia and two case files to Serbia. In the coming months, the Prosecutor intends to transfer three more cases to Bosnia and Herzegovina.

46. Extensive preparation, transfer and follow-up work is carried out by the Office of the Prosecutor's Transition Team. Throughout the process, the Transition Team works closely with local prosecutors to support the successful prosecution of these cases before national courts.

47. Throughout the reporting period the Office of the Prosecutor maintained positive working relationships with the Offices of the State Prosecutor in Zagreb and Sarajevo and War Crimes Prosecutor in Belgrade.

48. The Prosecutor is seriously concerned that due to lack of funding or late funding for the Special Department for War Crimes of the State court of Bosnia and Herzegovina for 2009, a number of ongoing projects and contracts of staff members, including international prosecutors, may have to be terminated. This would have a serious negative impact on ongoing and upcoming trials, including those case files transferred by the Tribunal. All efforts to strengthen the fragile judicial system in Bosnia and Herzegovina would also be jeopardized.

49. Finally, pursuant to an order of the Trial Chamber under Rule 73(A), the Office of the Prosecutor handed over four investigative files to the Government of the former Yugoslav Republic of Macedonia on 14 February 2008.

4.3. Supporting and sharing information with national prosecution offices of the former Yugoslavia

50. The Office of the Prosecutor continued to share material stored in its document collections and databases such as the Prosecution's Electronic Disclosure System. Access was provided to the judicial authorities of Montenegro on 6 December 2007. Similar arrangements had been concluded earlier with Croatia, Bosnia and Herzegovina and Serbia.

51. The Office of the Prosecutor's Transition Team also responded to multiple requests for assistance from national prosecution authorities. The Office of the Prosecutor provides material that is not protected under the rules or by a court order. Between 1 January 2008 and end April 2008, the Office of the Prosecutor received 73 requests from national

prosecution authorities. In addition, the Transition Team frequently supported national judicial authorities in Rule 75(H) proceedings for access to confidential material.

4.4. Capacity building efforts and inter-State regional cooperation

52. Throughout the reporting period, the Office of the Prosecutor continued, in association with Chambers and Registry, to be actively engaged in capacity building activities. The Office of the Prosecutor is also engaged in developing effective partnerships with its counterparts in the region.

53. Expertise and knowledge gained in the Office of the Prosecutor regarding complex war crimes investigations and prosecutions is constantly shared. Staff from national prosecution offices regularly travel to The Hague to consult the Office's databases and meet with the trial teams and the Transition Team. The goal is to share methodology and lessons learned, by engaging in a constructive dialogue and by encouraging mutual exchange of information and best practices.

54. The Office of the Prosecutor encourages efforts to strengthen cooperation between national prosecutors in the countries of the former Yugoslavia, as initiated by the OSCE in the so-called "Palić process" and taken over by the Croatian State Attorney's Office at the Brijuni conference, which was held in July 2007, and subsequent Hvar conference in October 2007. In this respect, the Prosecutor looks forward to the meeting on this process in Croatia in May. In the near future, all States in the region expect to be in a position to share information contained in "inventories" of war crimes cases. The Office of the Prosecutor will monitor the effectiveness of their information and evidence sharing and support initiatives to avoid parallel proceedings.

55. Nevertheless, despite this progress, two main obstacles remain to effective inter-state judicial cooperation, i.e. the failure to resolve the issue of non-extradition of nationals and the abolition of the legal barriers which prevent the transfer of war crimes proceedings between all the States of the former Yugoslavia. This judicial vacuum, which allows alleged war criminals in the region evade justice, results in an "impunity gap" and denies victims justice. Although there continues to be progress in the transfer of case materials and evidence between Serbia, Croatia and Montenegro, these issues must be addressed by all authorities concerned.

56. During the reporting period, the Office of the Prosecutor has encouraged effective regional cooperation between security and intelligence services. The Office of the Prosecutor has attended meetings with the heads of intelligence services of Bosnia and Herzegovina, Serbia, Montenegro, the former Yugoslav Republic of Macedonia and Slovenia to strengthen ties, improve information exchange and address the problem of fugitives and their support networks. This practice will be continued.

5. Structure and organisational management

57. In line with the budget, the reorganisation of the Office of the Prosecutor has been successfully implemented. The Investigations Division was merged with the Prosecution Division to create a new Trial Section which conducts and directly supports ongoing trials.

58. As trials are completed, the Appeals Section will be strengthened to handle the increase in appellate work. Until October 2009, the Office of the Prosecutor will continue to function at full capacity, in both trials and appeals, stretching its resources to cope with the remaining work-load.

59. The Office will also continue to focus on transitional justice work, particularly the transfer of investigative materials and providing support to national prosecutors, in order to strengthen domestic jurisdictions.

60. In the last term of 2009, the Office of the Prosecutor envisages considerable reductions in staff and non-post items such as travel and General Temporary Assistance.

61. Retention of staff members in the Office of the Prosecutor is critical to the successful completion of trials and appeals. As the Tribunal nears the completion of its work, increasing numbers of talented staff may start leaving the institution. The loss of institutional specialised knowledge and the difficulty in hiring experienced staff to complete remaining trials may impact on the Prosecutor's ability to meet his commitments in completing the Tribunal's work. This is an institution-wide problem. With the President and the Registrar, the Prosecutor supports initiatives to find ways to retain qualified and competent staff until the completion of the mandate.

62. In close consultation with the President and Registrar, the Prosecutor remains engaged in the planning process for the future of the Tribunal, once all trials and appeals on its docket are completed. Discussions in this regard are currently ongoing at the level of the United Nations Security Council.

6. Conclusion

63. The Office of the Prosecutor remains fully committed to the completion of trials and appeals in accordance with the objectives of the Completion Strategy. The Prosecutor continues to take steps to speed up proceedings, working closely with other organs of the Tribunal to explore ways to expedite proceedings while respecting the rights of the accused.

64. The Prosecutor works closely with the Offices of the State Prosecutors in Bosnia and Herzegovina and Croatia and the Office of the War Crimes Prosecutor in Serbia. As trial and appeals work progresses, the Office of the Prosecutor remains fully determined and committed to strengthening judicial systems in the States of the former Yugoslavia. Cooperation with national prosecution authorities is a cornerstone of the Office's strategy and will remain a priority in the coming years.

65. Cooperation by the international community and States from the former Yugoslavia remain key factors for the successful completion of the Tribunal's work. States from the former Yugoslavia are reminded of their obligation to fully cooperate with the Office of the Prosecutor by providing access to archives and documents, access to and protection of witnesses and tracking and arresting fugitives. In all these areas, cooperation is not yet wholly satisfactory and requires improvement. The fact that the four accused - Ratko Mladić, Radovan Karadžić, Stojan Župljanin and Goran Hadžić - remain at large is unacceptable as they must be tried by the Tribunal. Failing to arrest them will delay the completion of the International Tribunal's work.

Enclosure I

1. Persons Convicted or Acquitted after Trial between 15 November 2007 – 15 May 2008				
Case	**Name**	**Former Title**	**Initial Appearance**	**Judgement**
1.	Dragomir Milošević	Chief Commander, Romanija Corps, VRS	7-Dec-04	Judgement delivered on 12 December 2007 Trial Chamber sentences accused to thirty-three years of imprisonment
2.	Ramush Haradinaj	Commander, KLA	14-Mar-05	Judgement delivered on 3 April 2008 Accused acquitted on all counts
	Idriz Balaj	Commander, KLA	14-Mar-05	Judgement delivered on 3 April 2008 Accused acquitted on all counts
	Lahi Brahimaj	Deputy Commander, KLA	14-Mar-05	Judgement delivered on 3 April 2008 Accused found guilty of cruel treatment and torture as violations of the laws or customs of war. Trial Chamber sentences accused to six years' imprisonment
3.	Enver Hadžihasanović	Brig. Commander, ABiH	9-Aug-01	Judgement delivered on 22 April 2008 Appeals Chamber reduces the sentence of five years of imprisonment to three years and six months of imprisonment
	Amir Kubura	Commander, ABiH	9-Aug-01	Judgement delivered on 22 April 2008 Appeals Chamber reduces the sentence of thirty months of imprisonment to two years of imprisonment

2. Persons Pleading Guilty between 15 November 2007 – 15 May 2008				
Case	**Name**	**Former Title**	**Initial Appearance**	**Judgement**
No Guilty Pleas				

3. Persons Convicted of Contempt between 15 November 2007 – 15 May 2008			
Case	**Name**	**Initial Appearance**	**Judgement**
No Convictions of Contempt			

Legend:
VRS: *Bosnian Serb Army*
KLA: *Kosovo Liberation Army*
ABiH: *Army of Bosnia and Herzegovina*

Enclosure II

1. Trials in Progress between 15 November 2007 – 15 May 2008 (28 Accused in 8 cases)				
Case	**Name**	**Former Title**	**Initial Appearance**	**Comments**
1.	Jadranko Prlić	President, "Herceg-Bosna"	6-Apr-04	"Herceg-Bosna" Trial commenced 26 April 2006
	Bruno Stojić	Head, Department of Defence, "Herceg-Bosna"		
	Slobodan Praljak	Assistant Minister of Defence, "Herceg-Bosna"		
	Milivoj Petković	Commander, HVO		
	Valentin Ćorić	Chief of Military Police Administration, HVO		
	Berislav Pušić	Military Police Commanding Officer, HVO		
2.	Dragoljub Ojdanić	Chief of Staff, VJ	26-Apr-02	"Kosovo" Trial Commenced 10 July 2006
	Nikola Šainović	Deputy Prime Minister, FRY	3-May-02	
	Milan Milutinović	President, Republic of Serbia	27-Jan-03	
	Vladimir Lazarević	Commander, Pristina Corps, VJ, Kosovo	7-Feb-05	
	Sreten Lukić	Head Staff, Serbian Ministry of Internal Affairs, VJ, Kosovo	6-Apr-05	
	Nebojša Pavković	General, Commander of 3rd VJ Army, Kosovo	25-Apr-05	
3.	Ljubiša Beara	Colonel, Chief of Security, VRS	12-Oct-04	"Srebrenica" Trial Commenced 14 July 2006
	Drago Nikolić	Chief of Security, Drina Corps, VRS	23-Mar-05	
	Ljubomir Borovčanin	Deputy Commander, Ministry of Interior Special Police Brigade, RS	7-Apr-05	
	Vujadin Popović	Lt. Colonel, Assist. Commander, Drina Corps, VRS	18-Apr-05	
	Vinko Pandurević	Commander, Zvornik Brigade, VRS	31-Mar-05	
	Milan Gvero	Assistant Commander, VRS	2-Mar-05	
	Radivoje Miletić	Chief of Operations, Deputy Chief of Staff, VRS	2-Mar-05	
4.	Johan Tarčulovski	Personal Security Officer for President, FYROM	21-Mar-05	Trial Commenced 16 April 2007

	Ljube Boškoski	Minister of Interior, FYROM	1-Apr-05	
5.	Rasim Delić	Commander of the Main Staff of the Army of BiH	03-Mar-05	Trial Commenced 12 June 2007
6.	Vojislav Šešelj	President, SRS	26-Feb-03	Trial Commenced 7 November 2007
7.	Ante Gotovina	Commander, Split Military District, HV	12-Dec-05	Trial Commenced 11 March 2008
	Ivan Čermak	Assistant Minister of Defence, Commander of Military Police, Croatia	12-Mar-04	
	Mladen Markač	Special Police Commander, Croatia	12-Mar-04	
8.	Franko Simatović	Commander, Special Operations Unit, State Security Services ("DB"), Republic of Serbia	2-Jun-03	Trial Commenced 29 April 2008
	Jovica Stanišić	Head, State Security Services ("DB"), Republic of Serbia	12-Jun-03	

Legend:

FRY: *Federal Republic of Yugoslavia*
Herceg-Bosna: *Croatian Republic of Herceg-Bosna*
HVO: *Croatian Defence Council*
RS: *Republika Srpska*
VRS: *Bosnian Serb Army*
VJ: *Armed Forces of the Federal Republic of Yugoslavia*
FYROM: *Former Yugoslav Republic of Macedonia*
BiH: *Bosnia and Herzegovina*
SRS: *Serbian Radical Party*
HV: *Croatian Army*

Enclosure III

1. Arrivals at the Tribunal between 15 November 2007 – 15 May 2008					
	Name	**Former Title**	**Place of crime**	**Arrival Date**	**Initial Appearance**
No new arrivals for this period					

2. Remaining Fugitives between 15 November 2007 – 15 May 2008 (4 Accused)				
	Name	**Former Title**	**Place of Crime**	**Date indictment**
1	Radovan Karadžić	President, RS	BiH	25 July 1995
2	Ratko Mladić	Commander, Main Staff, VRS	BiH	25 July 1995
3	Goran Hadžić	President, "SAO SBWS"	Croatia	28 May 2004
4	Stojan Župljanin	Head or Commander of the Serb Operated Regional Security Services Centre	Krajina, Croatia	6 October 2004
	Total Remaining Indictees: 4			

Legend:
RS: Republika Srpska
VRS: Bosnian Serb Army
SAO SBWS: Serbian Autonomous District, Slavonia Baranja and Western Srem

Enclosure IV

Accused Awaiting Trial for the period between 15 November 2007 – 15 May 2008 (6 accused, 5 cases)			
Case	**Name**	**Former Title**	**Initial Appearance**
1.	Momčilo Perišić*	Chief of General Staff, VJ	9-Mar-05
2.	Mićo Stanišić	Minister, Internal Affairs, RS	17-Mar-05
3.	Zdravko Tolimir	Assistant Commander for Intelligence and Security of the Bosnian Serb Army	04-Jun-07
4.	Vlastimir Đorđević	Assistant Minister of the Serbian Ministry of Internal Affairs (MUP), Chief of the Public Security Department of the MUP	19-Jun-07
5.	Sredoje Lukić	Member, Serb Paramilitary Unit, BiH	20-Sept-05
	Milan Lukić		24-Feb-06

* *Accused has been granted provisional release.*

Legend:

VJ: *Armed Forces of the Federal Republic of Yugoslavia*
RS: *Republika Srpska*
BiH: *Bosnia and Herzegovina*

Enclosure V

1. 11*bis* motions pending between 15 November 2007 – 15 May 2008				
Case	**Name**	**Former Title**	**Motion filed**	**Status**
No 11bis motions pending to date				

2. 11*bis* motions pending on appeal between 15 November 2007 – 15 May 2008				
Case	**Name**	**Former Title**	**Motion filed**	**Status**
No 11bis motions pending to date				

3. 11*bis* cases referred between 15 November 2007 – 15 May 2008
In total, 13 Accused in 8 cases have been referred to the region on Rule 11bis motions to date.

Enclosure VI

APPEALS COMPLETED FROM 15 November 2007 [1]

(with date of filing and Decision) Updated to 5 May 2008

INTERLOCUTORY

ICTY		
1.	Prlić et al. IT-04-AR73.6	15/10/07-23/11/07
2.	Popovi} et al. IT-05-88-AR73.1	01/11/07-14/12/07
3.	[ešelj IT-03-67-AR77.1	12/11/07-14/12/07
4.	Milutinović et al. IT-05-87-AR65.3	14/12/07-18/12/07
5.	Milutinović et al. IT-05-87-AR65.4	14/12/07-18/12/07
6.	Milutinović et al. IT-05-87-AR65.5	14/12/07-18/12/07
7.	Gotovina et al. IT-06-90-AR65.1	28/11/07-17/01/08
8.	Gotovina et al. IT-06-90-AR65.2	04/01/08-24/01/08
9.	[ešelj IT-03-67-AR73.6	05/12/07-24/01/08
10.	Popovi} et al. IT-05-88-AR73.2	06/11/07-30/01/08
11.	Popovi} et al. IT-05-88-AR73.3	12/11/07-01/02/08
12.	Prlić et al. IT-04-74-AR65.5	21/02/08-11/03/08
13.	[ešelj IT-03-67-AR73.7	01/02/08-11/03/08
14.	Tolimir IT-05-88/2-AR73.1	31/01/08-28/03/08
15.	Prlić et al. IT-04-74-AR65.7	01/04/08-21/04/08
16.	Delić IT-04-83-AR73.1	25/03/08-15/04/08
17.	Prlić et al. IT-04-74-AR65.7	01/04/08-21/04/08
ICTR		
1.	Karemera et al. ICTR-98-44-AR73.12	15/10/07-06/12/07
2.	Karemera et al. ICTR-98-44-Ar73.11	09/10/07-24/01/08

FROM JUDGEMENT

ICTY		
1.	Hadžihasanovi}/Kubura IT-01-47-A	13/04/06-22/04/08
ICTR		
1.	Simba ICTR-01-76-A	14/12/05-27/11/07
2.	Media ICTR-99-52-A	12/12/03-28/11/07
3.	Seromba ICTR-01-66-A	11/01/07-12/03/08

OTHER

ICTY		
1.	Gotovina IT-06-90-AR108bis.2	06/12/07-17/01/08
2.	Bala IT-03-66-A	07/02/08-14/02/08
3.	Zelenović IT-96-23/2-ES	11/02/08-21/02/08
ICTR		
1.	Niyitegeka ICTR-96-14-R	22/08/07-24/01/08
2.	Rutaganda ICTR-96-3-R	07/08/07-31/01/08
3.	Ngeze ICTR-99-52-R	28/12/07-31/01/08
4.	Ngeze ICTR-99-52-R	13/02/08-28/02/08
5.	Ngeze ICTR-99-52-R	25/02/08-28/02/08
6.	Ngeze ICTR-99-52-R	25/02/08-03/03/08
7.	Barayagwiza ICTR-99-52-R	06/03/08-11/04/08
8.	Nahimana ICTR-99-52-R	27/03/08-21/04/08
9.	Rutaganda ICTR-96-3-R	06/02/08-23/04/08

REFERRAL

REVIEW

CONTEMPT

[1] **Total Number of Appeals Completed from 15 November 2007 = 35**

Interlocutory Appeals = 19 Contempt = 0 Referral = 0
Appeals from Judgement = 4 Review = 0 Other = 12

Enclosure VII

APPEALS pending as of 15 MAY 2008 [2]

(with date of filing) Updated to 5 May 2008

INTERLOCUTORY

ICTY	
1. Prlić et al. IT-04-74-AR72.3	05/03/08
2. Prlić et al. IT-04-74-AR65.8	08/04/08
3. Prlićet al. IT-04-74-AR65.9	09/04/08
4. Popovićet al. IT-05-88-AR65.4	10/04/08
5. Popović et al. IT-05-88-AR65.5	10/04/08
6. Popović et al. IT-05-88-AR65.6	10/04/08
7. Stanišić/Simatović IT-03-69-AR73.2	23/04/08
8. Prlić et al. IT-04-74-AR73.7	02/05/08
ICTR	
1. Karemera et al ICTR-98-44-AR73.13	11/03/08
2. Bicamumpaka ICTR-99-50-AR73.7	28/03/08

FROM JUDGEMENT

ICTY	
1. Orić IT-03-68-A	31/07/06
2. Krajišnik IT-00-39-A	25/10/06
3. Strugar IT-01-42-A	07/06/07
4. Martić IT-95-11-A	12/07/07
5. Mrkšić IT-95-13/1-A	29/10/07
6. D. Milošević IT-98-29/1-A	31/12/07
7. Haradinaj et al. IT-04-84-A	01/05/08
ICTR	
1. Muvunyi ICTR-00-55A-A	12/10/06
2. Karera ICTR-01-74-A	14/12/07

OTHER

ICTR	
1. Ngeze ICTR-99-52-52-R	07/04/08
2. Niyitegeka ICTR-96-14-R	14/04/08
3. Ngeze ICTR-99-52-52-R	02/05/08
4. Barayagwiza ICTR-99-52-R	02/05/08

REFERRAL

REVIEW

CONTEMPT

[2] **Total Number of Appeals Pending = 23**

Interlocutory Appeals = 10 Contempt = 0 Referral = 0
Appeals from Judgement = 9 Review = 0 Other = 4

Enclosure VIII

MOTIONS decided from 15 NOVEMBER 2007 To 5 May

ICTR		ICTY	
16/11	Muvunyi	16/11	Limaj
23/11	Muvunyi	23/11	Orić
14/12	Karera	23/11	Krajišnik
21/12	Karera	30/11	Hadžihasanović & Kubura
09/01	Karera	03/12	Krajišnik
11/01	Ngeze	05/12	Krajišnik
29/01	Muvunyi	11/12	Mrk{i} & [ljivan~anin
31/01	Seromba	14/12	Mrk{i} & [ljivan~anin
12/02	Rutaganda	14/12	Milutinović et al.
20/02	Ngeze	07/01	Krajišnik
28/02	Ngeze	10/01	Marti}
11/03	Ngeze	14/01	Strugar
19/03	Karemera et al.	15/01	Gotovina et al.
19/03	Barayagwiza	29/01	Strugar
28/03	Nahimana et al.	01/02	Mrk{i} & [ljivan~anin
28/03	Bizimungu et al.	08/02	Krajišnik
03/04	Karera	11/02	Krajišnik
17/04	Ngeze	13/02	D. Milo{ević
21/04	Niyitigeka	20/02	D. Milo{ević
25/04	Muvunyi	22/02	Prli} et al.
		22/02	Marti}
		28/02	Krajišnik
		04/03	Krajišnik
		10/03	Marti}
		10/03	Orić
		27/03	Krajišnik
		02/04	Strugar
		04/04	Marti}
		09/04	Mrk{i} & [ljivan~anin
		11/04	Hadžihasanović & Kubura
		11/04	Krajišnik
		15/04	Hadžihasanović & Kubura
		15/04	Strugar
		16/04	Marti}
		18/04	Krajišnik
		18/04	Krajišnik
		18/04	D. Milo{ević
		22/04	Mrk{i} & [ljivan~anin
		05/05	Mrk{i} & [ljivan~anin

Possible schedule for on-going and future trials
2006
2007
2008
2009
2010
Dalić
Perišić
Gotovina/Čermak/Markač
Stanišić/Simatović
Đorđević
Popović/Beara/Nikolić/Borovčanin/Miletić/Gvero/Pandurević
Tolimir
Bošković/Tarculovski
M Stanišić
Prlić/Stojić/Praljak/Petković/Ćorić/Pušić
Šešelj
Milutinović/Ojdanić/Šainović/Lukić/Pavković
Lukić/Lukić
Fugitives : to be tried if the fugitives arrive
(Karadžić)/(Mladić) - possible joinder with Perišić
(Đ.Đajić) - possible joinder with M Stanišić
(Hadžić)
New Cases for trial:

United Nations S/2008/327

Security Council

Distr.: General
15 May 2008

Original: English

Draft resolution

The Security Council,

Recalling its previous resolutions concerning the situation in Somalia, in particular resolution 733 (1992), resolution 1356 (2001), resolution 1425 (2002), resolution 1725 (2006), resolution 1744 (2007), resolution 1772 (2007), resolution 1801 (2008) and resolution 1811 (2008), and the statements of its President, in particular those of 13 July 2006 (S/PRST/2006/31), 22 December 2006 (S/PRST/2006/59), 30 April 2007 (S/PRST/2007/13), 14 June 2007 (S/PRST/2007/19) and 19 December 2007 (S/PRST/2007/49),

Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia,

Reiterating its commitment to a comprehensive and lasting settlement of the situation in Somalia through the Transitional Federal Charter (TFC), *stressing* the importance of broad-based and representative institutions reached through a political process ultimately inclusive of all, as envisaged in the TFC, and *reiterating* its support for Somalia's Transitional Federal Institutions (TFIs) to take this forward,

Reiterating the need for agreement on a comprehensive and lasting cessation of hostilities and a roadmap for the remainder of the transitional process, including free and democratic elections in 2009 as set out in the TFC,

Welcoming the continued efforts by Prime Minister Nur "Adde" Hassan Hussein and his Cabinet, under the leadership of President Abdullahi Yusuf Ahmed and supported by the Transitional Federal Parliament, to advance the political process and implement the transitional period, as required by the TFC, in particular the agreement to prepare a timetable for the Constitutional Process leading to a referendum in 2009, the presentation of the Reconciliation Strategy of the Transitional Federal Government (TFG), engagement with clan and local leaders across the country, and efforts to implement the National Security and Stabilisation Plan and to improve public finance management including budgetary and fiscal processes, and *supporting* efforts to make further progress in all these areas,

Welcoming the commitment of all Somali parties that have agreed to engage in dialogue with each other with a view to establishing peace and security in Somalia, *urging* all Somali parties to honour these commitments and to resort to peaceful means only to resolve their disputes, *further welcoming* the supporting role of the United Nations, in particular the practical support of the Special Representative of

the Secretary-General (SRSG) and the United Nations Political Office for Somalia (UNPOS) to help progress this dialogue, and *supporting* in this regard the start on 12 May 2008 of discussions between the parties in Djibouti,

Welcoming the Secretary-General's report on Somalia of 14 March 2008 (S/2008/178), in particular its assessment that the political situation in Somalia currently provides a renewed opportunity for the international community to give practical support to domestic initiatives, including an increased presence of United Nations personnel and, subject to broad-based political and security agreements and conditions on the ground, the deployment of a United Nations peacekeeping operation to succeed the African Union Mission to Somalia (AMISOM),

Welcoming the Secretary-General's support for a comprehensive United Nations strategic approach for peace and stability in Somalia, aligning and integrating political, security and programmatic efforts in a sequenced and mutually reinforcing way, and *endorsing* ongoing work by the United Nations to support the political process in Somalia and to determine options for re-locating United Nations staff to Somalia,

Commending the work of the SRSG, Mr. Ahmedou Ould-Abdallah, and of UNPOS, *reaffirming* its strong support for his work, in particular his leading role in coordinating international efforts, and *requesting* that all parties, as well as international organizations, the United Nations country team and Member States support and work in close coordination with him at all times,

Reaffirming its condemnation of all acts of, and incitement to, violence inside Somalia, *expressing* its concern at all acts intended to prevent or block a peaceful political process, and *expressing* its further concern at such acts and incitement continuing,

Underlining the importance of providing and maintaining stability and security throughout Somalia, and *underscoring* the importance of disarmament, demobilization and reintegration of militia and ex-combatants in Somalia,

Emphasizing the contribution that AMISOM is making to lasting peace and stability in Somalia, *welcoming* in particular the continuing commitment of the Governments of Uganda and Burundi, *regretting* the recent loss of a Burundian soldier, *condemning* any hostility towards AMISOM, and *urging* all parties in Somalia and the region to support and cooperate with AMISOM,

Underlining that the full deployment of AMISOM will help facilitate the full withdrawal of other foreign forces from Somalia and help create the conditions for lasting peace and stability there,

Taking note of the letter dated 20 February 2008 from the Chairperson of the African Union (AU) Commission to the Secretary-General, which was annexed to the Secretary-General's report of 14 March 2008, and of the reply from the Secretary-General of 23 April 2008 (S/2008/309),

Emphasizing the continued contribution made to Somalia's peace and security by the arms embargo imposed by resolution 733 (1992), as elaborated and amended by resolutions 1356 (2001), 1425 (2002), 1725 (2006), 1744 (2007) and 1772 (2007), and *reiterating* its demand that all Member States, in particular those in the region, comply fully with it,

Expressing deep concern at the human rights situation in Somalia, and *taking note* of the Resolution on Somalia adopted at the 7th Session of the Human Rights Council, and of the renewal by the Human Rights Council of the mandate for the Independent Expert on Somalia,

Expressing its serious concern at the worsening humanitarian situation in Somalia and the continuing difficulties for humanitarian organizations operating in Somalia, including humanitarian access and security for humanitarian personnel, and *reaffirming* the humanitarian principles of humanity, neutrality, impartiality and independence,

Determining that the situation in Somalia continues to constitute a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. *Requests* the Secretary-General to continue and intensify his efforts, working together with the international community, to promote an ongoing political process which is ultimately inclusive of all, including by assisting the TFIs in this regard and in delivering services to the Somali people;

2. *Strongly supports* the approach proposed by the Secretary-General's report of 14 March 2008, *welcomes* his intention to provide an updated comprehensive, integrated United Nations Strategy for peace and stability in Somalia, aligning and integrating political, security and programmatic efforts in a sequenced and mutually reinforcing way, and to include an assessment of the capacity of UNPOS to implement the Strategy, and requests that he submit the updated version to the Security Council within 60 days from the adoption of this resolution;

3. *Approves* the Secretary-General's proposal in his report of 14 March 2008 to establish a joint planning unit in the office of the SRSG to facilitate effective and efficient implementation of the integrated strategy;

4. *Welcomes* the Secretary-General's recommendation, as set out in his report of 14 March 2008, to relocate UNPOS and the country team headquarters from Nairobi to Mogadishu or an interim location in Somalia in order to help deliver the comprehensive, integrated United Nations strategy in Somalia, and *requests* the Secretary-General to establish the necessary security arrangements for such a relocation, and to update the Security Council when he submits the Strategy referred to in paragraph 2 above;

5. *Decides* that UNPOS and the United Nations country team shall, in promoting a comprehensive and lasting settlement in Somalia and through the promotion of the ongoing political process, enhance their support to the TFIs with the aim of developing a constitution and holding a constitutional referendum and free and democratic elections in 2009, as required by the TFC, and facilitating coordination of the international community's support to these efforts, and *requests* the Secretary-General within 60 days from the adoption of this resolution to report on progress with this work;

6. *Recalls* its intention to take measures against those who seek to prevent or block a peaceful political process, or those who threaten the TFIs or AMISOM by force, or take action that undermines stability in Somalia or the region, and *therefore requests* the Committee established pursuant to resolution 751 (1992) (herein after

"the Committee") to provide, within 60 days from the adoption of this resolution, recommendations on specific targeted measures to be imposed against such individuals or entities;

7. *Recalls* its intention to strengthen the effectiveness of the United Nations arms embargo on Somalia, *states* its intention to take measures against those who breach the arms embargo, and those who support them in doing so, and *therefore requests* the Committee to provide, within 60 days from the adoption of this resolution, recommendations on specific targeted measures to be imposed against such individuals or entities;

8. *Requests* the Secretary-General to continue his contingency planning for the possible deployment of a United Nations peacekeeping operation in Somalia to succeed AMISOM, including of possible additional scenarios, in close contact with UNPOS, the United Nations country team and other United Nations stakeholders, taking account of all relevant conditions on the ground, and considering additional options for the size, configuration, responsibility and proposed area of operation of the mission depending on different conditions on the ground, *requests* the Secretary-General to update on progress in his planning in the report referred to in paragraph 5 above, and *expresses* its willingness to consider, at *an* appropriate time, a peacekeeping operation to take over *from* AMISOM, subject to progress in the political process and improvement in the security situation on the ground;

9. *Welcomes* the Secretary-General's undertaking, as set out in his letter of 23 April 2008 to the Chairperson of the AU Commission, to provide additional United Nations technical advisers to the AU's Strategic Plans and Management Unit in Addis Ababa, and *encourages* the Secretary-General to continue to explore with the AU Commission Chairperson, in coordination with donors, ways and means to strengthen United Nations logistical, political and technical support for the AU, to build the AU's institutional capacity to carry out its commitments in addressing the challenges it faces in supporting AMISOM, and to assist AMISOM's full deployment, to the extent possible and as appropriate, with the goal of achieving United Nations standards, and to update the Council in the report referred to in paragraph 5 above;

10. *Reiterates* its call upon Member States to provide financial resources, personnel, equipment and services for the full deployment of AMISOM and upon Member States of the African Union to contribute to AMISOM in order to facilitate the withdrawal of other foreign forces from Somalia and help create the conditions for lasting peace and stability there, *urges* those Member States which have offered to contribute to AMISOM to fulfil such commitments, *recognizes* that more needs to be done to harness increased support for AMISOM, and *takes note* of the Secretary-General's proposals for harnessing such support, as set out in his letter of 23 April 2008;

11. *Reiterates* its support for the contribution made by some States to protect the World Food Programme maritime convoys, *calls upon* States and regional organizations, in close coordination with each other and as notified in advance to the Secretary-General, and at the request of the TFG, to take action to protect shipping involved with the transportation and delivery of humanitarian aid to Somalia and United Nations-authorized activities, *calls upon* AMISOM troop-contributing countries, as appropriate, to provide support to this end, and *requests* the Secretary-General to provide his support to this effect;

12. *Strongly supports and encourages* the ongoing humanitarian relief efforts in Somalia, *recalls* its resolution 1502 (2003) on the protection of humanitarian and United Nations personnel, *calls on* all parties and armed groups in Somalia to take appropriate steps to ensure the safety and security of AMISOM, United Nations and humanitarian personnel, *demands* that all parties ensure timely, safe and unhindered access for the delivery of humanitarian assistance to all those in need, wherever they may be, and *urges* the countries in the region to facilitate the provision of humanitarian assistance, including the timely, safe and unhindered passage of essential relief goods into Somalia by land or via air and sea ports;

13. *Requests* the Secretary-General to strengthen ongoing efforts for establishing a United Nations-led mechanism for bringing together and facilitating consultations between humanitarian organizations operating in Somalia, the TFG, donors and other relevant parties in order to help resolve issues of access, security and provision of humanitarian relief throughout Somalia, and *further requests* him to report on progress in the report referred to in paragraph 5 above;

14. *Requests* the Secretary-General to establish an effective capacity within UNPOS to monitor and enhance the protection of human rights in Somalia, and to ensure coordination, as appropriate, between UNPOS, the Office of the High Commissioner for Human Rights and the Human Rights Council Independent Expert, and *further requests* the Secretary-General to report on progress in achieving this in the report referred to in paragraph 5 above;

15. *Supports* the ongoing efforts of the United Nations, the African Union and interested Member States, in close cooperation with the TFG, to develop security sector institutions in Somalia, and *requests* the SRSG to enhance his coordination role in this area, aligning relevant United Nations programmes and Member States' activities;

16. *Condemns* all and any violations of human rights and international humanitarian law, *calls upon* all parties in Somalia to respect fully their obligations in this regard, and *calls* for those responsible for such violations in Somalia to be brought to justice;

17. *Reaffirms* its previous resolutions 1325 (2000) on women, peace and security, and 1674 (2006) and 1738 (2006) on the protection of civilians in armed conflict, and *stresses* the responsibility of all parties and armed groups in Somalia to take appropriate steps to protect the civilian population in the country, consistent with international humanitarian, human rights and refugee law, in particular by avoiding any indiscriminate attacks on populated areas;

18. *Reaffirms* its previous resolution 1612 (2005) on children and armed conflict and *recalls* the subsequent conclusions of the Security Council Working Group on Children in Armed Conflict pertaining to parties to the armed conflict in Somalia (S/AC.51/2007/14);

19. *Recalls* that, pursuant to Article 65 of the United Nations Charter, the Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request;

20. *Decides* to remain actively seized of the matter.

United Nations A/62/843–S/2008/328

General Assembly
Security Council

Distr.: General
14 May 2008

Original: English

General Assembly
Sixty-second session
Agenda items 17 and 18

Security Council
Sixty-third year

The situation in the Middle East

Question of Palestine

Identical letters dated 14 May 2008 from the Chargé d'affaires a.i. of the Permanent Mission of Israel to the United Nations addressed to the Secretary-General and the President of the Security Council

It is with grave concern that I write to inform you of yet another terrorist attack that occurred only a few hours ago, in which 34 Israeli civilians were injured by a Grad rocket launched by Palestinian terrorists from the Gaza Strip.

The Grad rocket crashed into a clinic located on the second floor of a crowded shopping mall in central Ashkelon, where innocent men, women and children were going about their daily lives. The attack caused terrible anxiety and panic. Three civilians were trapped under debris as a result of the attack and were evacuated in serious condition. An infant girl was evacuated with moderate wounds.

This is our third letter in less than a week informing you and the Security Council of Israeli casualties as a result of the constant and indiscriminate rocket fire from the Gaza Strip. Israel holds Hamas, as the ruling party, accountable for another vicious terrorist attack, which is in flagrant violation of international law and the most basic principles of humanitarian law.

The unremitting and indiscriminate rocket fire has levied an insufferable toll on the civilian population of southern Israel, triggering a severe humanitarian situation there. The safety and security of all citizens in our region will remain in peril so long as Palestinian terrorism continues unabated. Israel expects the international community to voice its strong condemnation of this attack. Israel will not stand idly by as its citizens are subjected to this constant terror, and reserves the right to defend itself, according to its inherent right under Article 51 of the Charter of the United Nations.

I should be grateful if you would have the present letter circulated as a document of the sixty-second session of the General Assembly, under agenda items 17 and 18, and of the Security Council.

(*Signed*) Daniel **Carmon**
Chargé d'affaires, a.i.

08-34027 (E) 150508